

By

Mow

S. B. No. 1311

A BILL TO BE ENTITLED

AN ACT

relating to the development and management of water resources.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.504(a), Water Code, is amended to read as follows:

(a) If the commission, the executive director, or the executive director's representative issues an emergency order under this subchapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the emergency order to be held before the commission or its designee as soon as practicable after the order is issued. If the emergency order is issued under Section 5.517 or 5.518, the order shall set a time for the hearing not later than the 20th day after the date the emergency order is issued.

SECTION 2. Subchapter L, Chapter 5, Water Code, is amended by adding Sections 5.517, 5.518, 5.519, and 5.520 to read as follows:

Sec. 5.517. EMERGENCY PERMIT TO DIVERT AND USE WATER; AMENDMENT TO WATER RIGHT. (a) Except as provided by Section 5.506 and after notification to the governor, the commission by emergency order may issue a permit to divert and use water or amend an existing permit, certified filing, or certificate of adjudication for an initial period not to exceed 120 days if the commission finds that:

Replaced by sub

1 (1) emergency conditions exist that present an
2 imminent threat to the public health, safety, and welfare or the
3 environment and that override the necessity to comply with
4 established statutory procedures; and

5 (2) there is no feasible practicable alternative to
6 the emergency authorization. The emergency authorization may be
7 renewed once for a period not to exceed 60 days.

8 (b) The executive director may issue an emergency order if
9 an imminent threat to the public health, safety, and welfare or the
10 environment exists that requires emergency action before the
11 commission can take action under Subsection (a) and there is no
12 feasible alternative. If the executive director issues an
13 emergency order under this subsection, the commission shall hold a
14 hearing as provided for in Section 5.504 as soon as practicable but
15 not later than 10 days after issuance of the order to affirm,
16 modify, or set aside the order. The person desiring the emergency
17 order must comply with Section 5.502 before the executive director
18 may act on the request for emergency action.

19 (c) The notice requirements of Section 11.132 relating to
20 the time for notice, newspaper notice, and method of giving a
21 person notice do not apply to a hearing held on an application for
22 an emergency order under this section. The commission shall give
23 the general notice of the hearing that the commission considers
24 practicable under the circumstances.

25 (d) The commission may adopt rules and impose fees necessary
26 to carry out the provisions of this section.

27 (e) An emergency order under this section does not vest in

1 the grantee any right to the diversion, impoundment, or use of
2 water and expires by its terms.

3 Sec. 5.518. EMERGENCY ORDER FOR TEMPORARY TRANSFER OF USE OF
4 WATER RIGHT. (a) The commission by emergency order may grant the
5 temporary transfer and use of all or part of a surface water right
6 for other than domestic or municipal use to a retail or wholesale
7 water supplier for public health and safety purposes.

8 (b) The commission may direct the applicant to timely pay
9 the amounts for which the applicant may be potentially liable under
10 this section and to fully indemnify and hold harmless the state,
11 the executive director, and the commission from any and all
12 liability for the order sought. The commission may order bond or
13 other surety in a form acceptable to the commission as a condition
14 for an emergency order under this section. The commission may not
15 grant an emergency authorization under this section that would
16 cause a violation of a federal regulation.

17 (c) A person granted an emergency order under this section
18 is liable to the owner from whom the use is transferred for the
19 fair market value of the water transferred and for any damages
20 proximately caused by the transfer of use. If, within 60 days of
21 the termination of the order, the parties do not agree on the
22 amount due, or if full payment is not made, either party may file a
23 complaint with the commission to determine the amount due.

24 (d) The commission by rule shall establish a dispute
25 resolution procedure for a complaint filed under this section.
26 After exhausting all administrative remedies under this section, an
27 owner from whom the use is transferred may file suit to recover or

1 determine the amount due in a district court in the county where
2 the owner resides or has its headquarters. The prevailing party in
3 a suit filed under this subsection is entitled to recover court
4 costs and reasonable attorney's fees.

5 Sec. 5.519. EMERGENCY WORKS SAFETY ORDER. The commission
6 may issue a mandatory or prohibitory emergency order directing the
7 owner of a dam, levee, or other water-storage or flood-control work
8 to repair, modify, maintain, dewater, or remove a work if the
9 commission finds that:

10 (1) the existing condition of the work is causing or
11 will cause extensive or severe property damage or economic loss to
12 others or is posing an immediate and serious threat to human life
13 or health; and

14 (2) other procedures available to the commission to
15 remedy or prevent the occurrence will result in unreasonable delay.

16 Sec. 5.520. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
17 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
18 The commission may issue an emergency order appointing a willing
19 person to temporarily manage and operate a utility under Section
20 7.403. Notice of the action is adequate if the notice is mailed or
21 hand delivered to the last known address of the utility's
22 headquarters.

23 SECTION 3. Section 7.004, Water Code, is amended to read as
24 follows:

25 Sec. 7.004. REMEDIES CUMULATIVE. The remedies under this
26 chapter are cumulative of all other remedies. Nothing in this
27 chapter affects the right of a private corporation, [or]

1 individual, or political subdivision that has a justiciable
2 interest to pursue any available common law remedy to enforce a
3 right, to abate a condition of pollution or other nuisance, to
4 recover damages to enforce a right, or to prevent or seek redress
5 or compensation for the violation of a right or otherwise redress
6 an injury.

7 SECTION 4. Subchapter B, Chapter 7, Water Code, is amended
8 by adding Section 7.034 to read as follows:

9 Sec. 7.034. ATTORNEY'S FEES; COSTS. A district court may
10 award the costs of litigation, including reasonable attorney's fees
11 and expert costs, to any political subdivision of the state,
12 private corporation, or individual that is a water right holder and
13 that prevails in a suit for injunctive relief to redress an
14 unauthorized diversion, impoundment, or use of surface water in
15 violation of Chapter 11 or a rule adopted under Chapter 11.

16 SECTION 5. Section 7.051(b), Water Code, is amended to read
17 as follows:

18 (b) Except as provided by this subsection, this [This]
19 subchapter does not apply to violations of Chapter [117] 12, 13,
20 16, or 36 [of-this-code,--or-Chapter-3417--Health-and--Safety--Code].
21 This subchapter does apply to Section 16.236.

22 SECTION 6. Section 7.052, Water Code, is amended to read as
23 follows:

24 Sec. 7.052. MAXIMUM PENALTY. (a) The amount of the
25 penalty for a violation of Chapter 18, 32, 33, or 34 of this code
26 or Chapter 366, 371, or 372, Health and Safety Code, may not exceed
27 \$2,500 a day for each violation.

1 **(b) The amount of the penalty for a violation under Chapter**
2 **11 described by Section 11.082 or 11.0842 may not exceed \$5,000 a**
3 **day for each violation.**

4 **(c) The penalty for a violation of a rule or order adopted**
5 **under Section 16.236 may not exceed \$1,000 a day for each**
6 **violation.**

7 **(d) The amount of the penalty for a violation under Chapter**
8 **341, Health and Safety Code, may not be less than \$50 or more than**
9 **\$1,000 for each violation.**

10 **(e) The amount of the penalty for all other violations**
11 **within the jurisdiction of the commission to enforce may not exceed**
12 **\$10,000 a day for each violation.**

13 **(f) [~~f~~]** Each day that a continuing violation occurs may be
14 considered a separate violation. The commission may authorize an
15 installment payment schedule for an administrative penalty
16 assessed under this subchapter, except for an administrative
17 penalty assessed under Section 7.057 or assessed after a hearing
18 under Section 7.058.

19 SECTION 7. Section 7.054, Water Code, is amended to read as
20 follows:

21 Sec. 7.054. REPORT OF VIOLATION. **(a)** If, after examination
22 of a possible violation and the facts surrounding that possible
23 violation, the executive director concludes that a violation has
24 occurred, the executive director may issue a preliminary report in
25 accordance with commission rules that includes recommendations
26 regarding any penalty or corrective action.

27 **(b) A report regarding a possible violation under Chapter 11**

1 must state the facts on which the conclusion was based and
2 recommend the amount of any penalty. The executive director shall
3 base the recommended amount of the proposed penalty on the factors
4 provided by Section 7.053 and shall analyze each factor for the
5 benefit of the commission.

6 SECTION 8. Section 7.069, Water Code, is amended to read as
7 follows:

8 Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as provided
9 by Subsection (b), a [A] penalty collected under this subchapter
10 shall be deposited to the credit of the general revenue fund.

11 (b) A penalty collected under this subchapter from a public
12 utility shall be paid to the commission and deposited in the water
13 utility improvement account as provided by Section 341.0485, Health
14 and Safety Code.

15 SECTION 9. Subchapter B, Chapter 7, Water Code, is amended
16 by adding Section 7.076 to read as follows:

17 Sec. 7.076. COMPROMISE, MODIFICATION, OR REMISSION OF
18 CERTAIN PENALTIES. Notwithstanding any other provision to the
19 contrary, the commission may compromise, modify, or remit, with or
20 without condition, any penalty imposed under this subchapter for a
21 violation under Chapter 11.

22 SECTION 10. Section 7.102, Water Code, is amended to read as
23 follows:

24 Sec. 7.102. MAXIMUM PENALTY. (a) A person who causes,
25 suffers, allows, or permits a violation of a statute, rule, order,
26 or permit relating to Chapter 11, 18, 32, 33, or 34 of this code or
27 Chapter 366, 371, or 372, Health and Safety Code, shall be assessed

1 for each violation a civil penalty not less than \$50 nor greater
2 than \$5,000 for each day of each violation as the court or jury
3 considers proper.

4 (b) The amount of a penalty for a violation of a rule or
5 order issued by the commission under Section 12.052 may not exceed
6 \$5,000.

7 (c) A person who causes, suffers, allows, or permits a
8 violation of a statute, rule, order, or permit relating to Chapter
9 13 shall be assessed for each violation a civil penalty not less
10 than \$100 nor greater than \$5,000 for each day of each violation as
11 the court or jury considers proper.

12 (d) A person who causes, suffers, allows, or permits a
13 violation of a statute, rule, order, or permit relating to any
14 other matter within the commission's jurisdiction to enforce,
15 other than violations of Chapter [17] 12, [37] 16, or 36 of this
16 code, or Chapter 341, Health and Safety Code, shall be assessed for
17 each violation a civil penalty not less than \$50 nor greater than
18 \$25,000 for each day of each violation as the court or jury
19 considers proper.

20 (e) Each day of a continuing violation is a separate
21 violation.

22 SECTION 11. Sections 7.105(a) and (c), Water Code, are
23 amended to read as follows:

24 (a) On the request of the executive director or the
25 commission, the attorney general shall institute a suit in the name
26 of the state for injunctive relief under Section 7.032, to recover
27 a civil penalty, or for both injunctive relief and a civil penalty.

1 The attorney general may initiate a suit for recovery of a penalty
2 under this section for a violation under Section 13.414.

3 (c) Except as provided by this subsection, the [The] suit
4 may be brought in Travis County, in the county in which the
5 defendant resides, or in the county in which the violation or
6 threat of violation occurs. A suit to recover a penalty for a
7 violation of a rule or order issued by the commission under Section
8 12.052 may be brought in Travis County.

9 SECTION 12. Subchapter D, Chapter 7, Water Code, is amended
10 by adding Section 7.1075 to read as follows:

11 Sec. 7.1075. DISPOSITION OF PENALTY COLLECTED FROM PUBLIC
12 UTILITY. A penalty collected under this subchapter from a public
13 utility shall be paid to the commission and deposited in the water
14 utility improvement account as provided by Section 341.0485, Health
15 and Safety Code.

16 SECTION 13. Subchapter D, Chapter 7, Water Code, is amended
17 by adding Section 7.112 to read as follows:

18 Sec. 7.112. LIMITATION ON SUIT FOR VIOLATION OF SECTION
19 11.082. An action to collect the penalty provided by Section 7.102
20 for a violation of Section 11.082 must be brought within two years
21 from the date of the alleged violation.

22 SECTION 14. Section 7.351, Water Code, is amended to read as
23 follows:

24 Sec. 7.351. CIVIL SUITS. If it appears that a violation or
25 threat of violation of Chapter 16, 26, 28, or 34 of this code or
26 Chapter 341, 361, 371, 372, or 382, Health and Safety Code, or a
27 provision of Chapter 401, Health and Safety Code, under the

1 commission's jurisdiction or a rule adopted or an order or a permit
2 issued under those chapters or provisions has occurred or is
3 occurring in the jurisdiction of a local government, the local
4 government or, in the case of a violation of Chapter 401, Health
5 and Safety Code, a person affected as defined in that chapter, may
6 institute a civil suit under Subchapter D in the same manner as the
7 commission in a district court by its own attorney for the
8 injunctive relief or civil penalty, or both, as authorized by this
9 chapter against the person who committed, is committing, or is
10 threatening to commit the violation.

11 SECTION 15. Section 11.0843, Water Code, is transferred to
12 Subchapter C, Chapter 7, Water Code, renumbered as Section 7.077,
13 and amended to read as follows:

14 Sec. 7.077 [~~11-0843~~]. FIELD CITATION. (a) Upon witnessing
15 a violation of Chapter 11 [~~this-chapter~~] or a rule or order or a
16 water right issued under Chapter 11 [~~this-chapter~~], a watermaster
17 or the watermaster's deputy, as defined by commission rule, may
18 issue the alleged violator a field citation alleging that a
19 violation has occurred and providing the alleged violator the
20 option of either:

21 (1) without admitting to or denying the alleged
22 violation, paying an administrative penalty in accordance with the
23 predetermined penalty amount established under Subsection (b) of
24 this section and taking remedial action as provided in the
25 citation; or

26 (2) requesting a hearing on the alleged violation in
27 accordance with Section 7.058 [~~11-0842~~] of this code.

1 (b) By rule the commission shall establish penalty amounts
2 corresponding to types of violations of Chapter 11 [~~this-chapter~~]
3 or rules or orders adopted or water rights issued under Chapter 11
4 [~~this-chapter~~].

5 [~~(c)---A---penalty---collected---under---this---section---shall---be~~
6 ~~deposited-in-the-state---treasury---to---the---credit---of---the---general~~
7 ~~revenue-fund.~~]

8 SECTION 16. Section 11.085, Water Code, is amended by adding
9 Subsection (w) to read as follows:

10 (w) The requirements of this section apply to the transfer
11 of water from one river basin to another regardless of whether all
12 or any part of the water right, permit, certified filing, or
13 certificate of adjudication under which the water is authorized to
14 be used is also transferred.

15 SECTION 17. Section 11.138(a), Water Code, is amended to
16 read as follows:

17 (a) The commission may issue temporary permits for
18 beneficial purposes to the extent that they do not interfere with
19 or adversely affect prior appropriations or vested rights on the
20 stream from which water is to be diverted under such temporary
21 permit. The commission may, by appropriate order, authorize any
22 member of the commission to approve and issue temporary permits
23 without notice and hearing if it appears to such issuing party that
24 sufficient water is available at the proposed point of diversion to
25 satisfy the requirements of the temporary permit as well as all
26 existing rights. No temporary permit issued without notice and
27 hearing shall authorize more than 10 acre-feet of water, nor may it

1 be for a term in excess of one year. The commission by rule may
2 authorize the beneficial use, without a permit, of not more than 25
3 acre-feet of water, for a term not to exceed one year, if the
4 diversion of water will not affect existing water right holders and
5 the user of the water registers the use with the commission in the
6 manner required by the commission.

7 SECTION 18. Section 11.139, Water Code, is amended to read
8 as follows:

9 Sec. 11.139. EMERGENCY AUTHORIZATIONS. ~~[(a)]~~ Except as
10 provided by Section 11.148 of this code, the commission may grant
11 an emergency permit, order, or amendment to an existing permit,
12 certified filing, or certificate of adjudication under Subchapter
13 L, Chapter 5 ~~[after-notice-to-the-governor-for-an-initial-period-of~~
14 ~~not---more----than---120---days-if-the-commission-finds-that-emergency~~
15 ~~conditions-exist-which-present-an-imminent--threat--to--the--public~~
16 ~~health--and--safety-and-which-override-the-necessity-to-comply-with~~
17 ~~established--statutory--procedures--and--there--are---no---feasible~~
18 ~~practicable--alternatives--to--the--emergency--authorization---Such~~
19 ~~emergency-action-may-be-renewed-once-for-not-longer-than-60-days]~~.

20 ~~[(b)---A-person-desiring-to-obtain-an-emergency--authorization~~
21 ~~under---this--section--shall--submit--to--the--commission--a--sworn~~
22 ~~application-containing-the-following-information:~~

23 ~~[(1)---a--description--of--the--condition--of--emergency~~
24 ~~justifying-the-granting-of-the-emergency-authorization;~~

25 ~~[(2)---a-statement-setting-forth-facts-which-support-the~~
26 ~~findings-required-under-this-section;~~

27 ~~[(3)---an-estimate-of-the-dates-on--which--the--proposed~~

1 authorization-should-begin-and-end;

2 [(4) --a--description--of--the--action--sought--and--the
3 activity-proposed-to-be-allowed, mandated, or prohibited; and

4 [(5) --any--other--statements-or-information-required-by
5 the-commission;

6 [(c) --If-the-commission-finds-the-applicant's-statement--made
7 under--Subsection-(b)-of-this-section-to-be-correct, the-commission
8 may-grant--emergency--authorizations--under--this--section--without
9 notice--and--hearing--or--with--such--notice--and--hearing--as--the
10 commission-considers-practicable-under-the-circumstances;

11 [(d) --If--the--commission--grants--an-emergency-authorization
12 under-this-section-without-a-hearing, the-authorization-shall-fix-a
13 time-and-place-for-a-hearing-to-be-held-before-the-commission;--The
14 hearing-shall-be-held-as-soon-after-the-emergency-authorization--is
15 granted--as--is--practicable--but--not-later-than-20-days-after-the
16 emergency-authorization-is-granted;

17 [(e) --At-the-hearing, the-commission-shall-affirm, modify, or
18 set-aside-the-emergency-authorization;--Any-hearing-on-an-emergency
19 authorization-shall-be-conducted-in-accordance-with--Chapter--2001,
20 Government-Code, and-rules-of-the-commission;

21 [(f) --If--an--imminent-threat-to-the-public-health-and-safety
22 exists-which-requires-emergency-action-before--the--commission--can
23 take--action--as--provided--by-Subsections-(a)--through-(c)-of-this
24 section-and-there--are--no--feasible--alternatives, the--executive
25 director--may--grant-an-emergency-authorization-after-notice-to-the
26 governor;--If--the--executive--director--issues--an--emergency
27 authorization--under--this--subsection, the-commission-shall-hold-a

1 hearing-as-provided-for-in-Subsections-(d)-and-(e)-of-this-section.
2 The-requirements--of--Subsection--(b)--of--this--section--shall--be
3 satisfied--by-the-applicant-before-action-is-taken-by-the-executive
4 director-on-the-request-for-emergency-authorization.

5 [(g)--The--requirements--of--Section--11-132--of--this--code
6 relating--to--the--time-for-notice, newspaper-notice, and-method-of
7 giving-a-person-notice-do--not--apply--to--a--hearing--held--on--an
8 application--for-an-emergency-authorization-under-this-section, but
9 such--general--notice--of--the--hearing--shall--be--given--as--the
10 commission,--under--Subsections--(c)--and--(e)--of--this--section,
11 considers-practicable-under-the-circumstances.

12 [(h)--The-commission-may--grant--an--emergency--authorization
13 under--this--section--for--the-temporary-transfer-and-use-of-all-or
14 part-of-a-permit, certified-filing, or-certificate-of--adjudication
15 for--other--than-domestic-or-municipal-use-to-a-retail-or-wholesale
16 water-supplier-for-public-health-and-safety-purposes. In--addition
17 to--the--requirements--contained-in-Subsection-(b)-of-this-section,
18 the-commission-may-direct-that-the-applicant-will--timely--pay--the
19 amounts--for--which--the--applicant-may-be-potentially-liable-under
20 Subsection-(j)-of-this-section-and-to-the-extent-authorized-by--law
21 will--fully--indemnify--and--hold-harmless-the-state, the-executive
22 director, and-the-commission-from-any-and--all--liability--for--the
23 authorization--sought. The--commission--may--order--bond-or-other
24 surety-in-a-form-acceptable-to-the-commission-as--a--condition--for
25 such--emergency--authorization. The--commission--may-not-grant-an
26 emergency-authorization-under-this--section--which--would--cause--a
27 violation-of-a-federal-regulation.

1 [(i)--In--transferring--the--amount-of-water-requested-by-the
2 applicant,--the-executive-director-or-the-commission-shall--allocate
3 the--requested-amount-among-two-or-more-permits,--certified-filings,
4 or--certificates--of--adjudication--for--other--than--domestic--or
5 municipal-use.]

6 [(j)--The--person--granted--an--emergency-authorization-under
7 Subsection-(h)--of--this-section-is--liable--to--the--owner--and--the
8 owner's--agent--or--lessee-from-whom-the-use-is-transferred-for-the
9 fair-market-value-of-the-water--transferred--as--well--as--for--any
10 damages--caused--by-the-transfer-of-use.--If,--within-60-days-of-the
11 termination-of-the-authorization,--the-parties-do-not-agree--on--the
12 amount-due,--or-if-full-payment-is-not-made,--either-party-may-file-a
13 complaint--with--the--commission--to-determine-the-amount-due.--The
14 commission-may-use-dispute-resolution-procedures--for--a--complaint
15 filed--under--this-subsection.--After-exhausting-all-administrative
16 remedies-under-this-subsection,--an--owner--from--whom--the--use--is
17 transferred-may-file-suit-to-recover-or-determine-the-amount-due-in
18 a--district--court-in-the-county-where-the-owner-resides-or-has-its
19 headquarters.--The-prevailing-party-in--a--suit--filed--under--this
20 subsection--is--entitled--to--recover--court--costs--and-reasonable
21 attorney's-fees.]

22 [(k)--The-commission-may-prescribe-rules-and-adopt-fees-which
23 are-necessary-to-carry-out-the-provisions-of-this-section.]

24 [(l)--An-emergency-authorization-does-not-vest-in-the-grantee
25 any-right-to-the-diversion,--impoundment,--or-use-of-water-and--shall
26 expire-and-be-cancelled-in-accordance-with-its-terms.]

27 SECTION 19. Section 11.173(b), Water Code, is amended to

1 read as follows:

2 (b) A permit, certified filing, or certificate of
3 adjudication or a portion of a permit, certified filing, or
4 certificate of adjudication is exempt from cancellation under
5 Subsection (a) of this section:

6 (1) to the extent of the owner's participation in the
7 Conservation Reserve Program authorized by the Food Security Act,
8 Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985)
9 or a similar governmental program; [or]

10 (2) if any portion of the water authorized to be used
11 pursuant to a permit, certified filing, or certificate of
12 adjudication has been used in accordance with a regional water plan
13 approved pursuant to Section 16.053 of this code;

14 (3) if the permit, certified filing, or certificate of
15 adjudication was obtained to meet demonstrated long-term public
16 water supply or electric generation needs as evidenced by a water
17 management plan developed by the holder and consistent with
18 projections of future water needs contained in the state water
19 plan; or

20 (4) if the permit, certified filing, or certificate of
21 adjudication was obtained as the result of the construction of a
22 reservoir funded, in whole or in part, by the holder of the
23 permit, certified filing, or certificate of adjudication as part of
24 the holder's long-term water planning.

25 SECTION 20. Section 11.177(b), Water Code, is amended to
26 read as follows:

27 (b) In determining what constitutes reasonable diligence or

1 a justified nonuse as used in Subsection (a)(2) of this section,
2 the commission shall give consideration to:

3 (1) whether sufficient water is available in the
4 source of supply to meet all or part of the appropriation during
5 the 10-year period of nonuse;

6 (2) whether the nonuse is justified by the holder's
7 participation in the federal Conservation Reserve Program or a
8 similar governmental program as provided by Section 11.173(b)(1) of
9 this code;

10 (3) [~~whether--the---permit,---certified---filing,---or~~
11 ~~certificate--of--adjudication--was--obtained--to--meet--demonstrated~~
12 ~~long-term-public-water--supply--or--electric--generation--needs--as~~
13 ~~evidenced--by--a--water-management-plan-developed-by-the-holder-and~~
14 ~~consistent-with-projections-of-future-water-needs-contained-in--the~~
15 ~~state-water-plan,~~

16 [~~4~~]--whether---the---permit,---certified---filing,---or
17 certificate-of-adjudication-was---obtained--as--the--result--of--the
18 construction--of--a--reservoir--funded,--in-whole-or-in-part,--by-the
19 holder--of--the--permit,---certified--filing,--or---certificate---of
20 adjudication-as-part-of-the-holder's-long-term-water-planning,

21 [~~5~~] whether the existing or proposed authorized
22 purpose and place of use are consistent with an approved regional
23 water plan as provided by Section 16.053 of this code;

24 (4) [~~6~~] whether the permit, certified filing, or
25 certificate of adjudication has been deposited into the Texas Water
26 Bank as provided by Sections 15.7031 and 15.704 of this code or
27 whether it can be shown that the water right or water available

1 under the right is currently being made available for purchase
2 through private marketing efforts; or

3 (5) [~~7~~] whether the permit, certified filing, or
4 certificate of adjudication has been reserved to provide for
5 instream flows or bay and estuary inflows.

6 SECTION 21. Sections 12.052(c), (d), (e), and (f), Water
7 Code, are amended to read as follows:

8 (c) The [~~if--the~~] owner of a dam that is required to be
9 constructed, reconstructed, repaired, or removed in order to comply
10 with the rules and orders promulgated under Subsection (a) of this
11 section may not wilfully fail [~~fails~~] or refuse [~~refuses~~] to comply
12 within the 30-day period following the date of the commission's
13 final, nonappealable order to do so and may not [~~or-if-a-person~~]
14 wilfully fail [~~fails~~] to comply with any rule or other order issued
15 by the commission under this section within the 30-day period
16 following the effective date of the order[~~7--he-is-liable-to-a~~
17 ~~penalty-of-not-more-than-\$5,000-a-day-for-each-day-he-continues--to~~
18 ~~violate--this--section.---The-state-may-recover-the-penalty-by-suit~~
19 ~~brought-for-that-purpose-in-the-district-court-of-Travis-County~~].

20 (d) The commission may issue an emergency works safety order
21 under Section 5.519 [~~if-the-commission-determines-that-the-existing~~
22 ~~condition--of-the-dam-is-creating-or-will-cause-extensive-or-severe~~
23 ~~property-damage--or--economic--loss--to--others--or--is--posing--an~~
24 ~~immediate-and-serious-threat-to-human-life-or-health-and-that-other~~
25 ~~procedures--available--to--the--commission-to-remedy-or-prevent-the~~
26 ~~occurrence-of-the-situation-will-result-in-unreasonable-delay7--the~~
27 ~~commission--may--issue--an--emergency--order7--either--mandatory-or~~

1 prohibitory-in-nature, directing the owner--of--a--dam--to--repair,
2 modify,--maintain,--dewater, or remove the dam which the commission
3 determines is unsafe.---The emergency order may--be--issued--without
4 notice--to--the--dam--owner or with notice the commission considers
5 practicable under the circumstances.---The notice does not--have--to
6 comply with Chapter 2001, Government Code].

7 (e) [If--the--commission--issues--an--emergency--order under
8 authority of this section without notice--to--the--dam--owner,--the
9 commission--shall fix a time and place for a hearing which shall be
10 held as soon as practicable to affirm, modify,--or--set--aside--the
11 emergency--order.---The notice does not have to comply with Chapter
12 2001, Government Code.---If the nature of--the--commission's--action
13 requires--further proceedings, those proceedings shall be conducted
14 as--appropriate--under--the--Administrative--Procedure--and---Texas
15 Register--Act,--as--amended--(Article 6252-13a, Vernon's Texas Civil
16 Statutes).-

17 [{f}] Nothing in this section or in rules or orders made by
18 the commission shall be construed to relieve an owner or operator
19 of a dam or reservoir of the legal duties, obligations, or
20 liabilities incident to ownership or operation.

21 SECTION 22. Section 13.411, Water Code, is transferred to
22 Subchapter B, Chapter 7, Water Code, renumbered as Section 7.0325,
23 and amended to read as follows:

24 Sec. 7.0325 [13.411]. ACTION TO ENJOIN OR REQUIRE
25 COMPLIANCE: RETAIL PUBLIC UTILITIES. (a) If the commission has
26 reason to believe that any retail public utility or any other
27 person or corporation is engaged in or is about to engage in any

1 act in violation of Chapter 13 [~~this-chapter~~] or of any order or
2 rule of the commission entered or adopted under Chapter 13 [~~this~~
3 ~~chapter~~] or that any retail public utility or any other person or
4 corporation is failing to comply with Chapter 13, [~~this-chapter~~] or
5 with any rule or order, the attorney general on request of the
6 commission, in addition to any other remedies provided in this
7 chapter, shall bring an action in a court of competent jurisdiction
8 in the name of and on behalf of the commission against the retail
9 public utility or other person or corporation to enjoin the
10 commencement or continuation of any act or to require compliance
11 with Chapter 13 [~~this-chapter~~] or the rule or order.

12 (b) If the executive director has reason to believe that the
13 failure of the owner or operator of a water utility to properly
14 operate, maintain, or provide adequate facilities presents an
15 imminent threat to human health or safety, the executive director
16 shall immediately:

17 (1) notify the utility's representative; and

18 (2) initiate enforcement action consistent with:

19 (A) this subchapter; and

20 (B) procedural rules adopted by the commission.

21 SECTION 23. Chapter 7, Water Code, is amended by adding
22 Subchapter I, and Sections 13.412, 13.4131, and 13.4132, Water
23 Code, are transferred to Subchapter I, Chapter 7, Water Code,
24 redesignated as Sections 7.401, 7.402, and 7.403, and amended to
25 read as follows:

26 SUBCHAPTER I. RECEIVERSHIP; SUPERVISION OF CERTAIN UTILITIES

27 Sec. 7.401 [~~13-412~~]. RECEIVERSHIP. (a) At the request of

1 the commission, the attorney general shall bring suit for the
2 appointment of a receiver to collect the assets and carry on the
3 business of a water or sewer utility that:

4 (1) has abandoned operation of its facilities;

5 (2) informs the commission that the owner is
6 abandoning the system;

7 (3) violates a final order of the commission; or

8 (4) allows any property owned or controlled by it to
9 be used in violation of a final order of the commission.

10 (b) The court shall appoint a receiver if an appointment is
11 necessary:

12 (1) to guarantee the collection of assessments, fees,
13 penalties, or interest;

14 (2) to guarantee continuous and adequate service to
15 the customers of the utility; or

16 (3) to prevent continued or repeated violation of the
17 final order.

18 (c) The receiver shall execute a bond to assure the proper
19 performance of the receiver's duties in an amount to be set by the
20 court.

21 (d) After appointment and execution of bond, the receiver
22 shall take possession of the assets of the utility specified by the
23 court. Until discharged by the court, the receiver shall perform
24 the duties that the court directs to preserve the assets and carry
25 on the business of the utility and shall strictly observe the final
26 order involved.

27 (e) On a showing of good cause by the utility, the court may

1 dissolve the receivership and order the assets and control of the
2 business returned to the utility.

3 (f) For purposes of this section and Section 7.403
4 [~~13-4132~~], abandonment may include but is not limited to:

5 (1) failure to pay a bill or obligation owed to a
6 retail public utility or to an electric or gas utility with the
7 result that the utility service provider has issued a notice of
8 discontinuance of necessary services;

9 (2) failure to provide appropriate water or wastewater
10 treatment so that a potential health hazard results;

11 (3) failure to adequately maintain facilities,
12 resulting in potential health hazards, extended outages, or
13 repeated service interruptions;

14 (4) failure to provide customers adequate notice of a
15 health hazard or potential health hazard;

16 (5) failure to secure an alternative available water
17 supply during an outage;

18 (6) displaying a pattern of hostility toward or
19 repeatedly failing to respond to the commission or the utility's
20 customers; and

21 (7) failure to provide the commission with adequate
22 information on how to contact the utility for normal business and
23 emergency purposes.

24 (g) Notwithstanding Section 64.021, Civil Practice and
25 Remedies Code, a receiver appointed under this section may seek
26 commission approval to acquire the water or sewer utility's
27 facilities and transfer the utility's certificate of convenience

1 and necessity. The receiver must apply in accordance with
2 Subchapter H, Chapter 13.

3 Sec. 7.402 [~~13-4131~~]. SUPERVISION OF CERTAIN UTILITIES. (a)
4 The commission, after providing to the utility notice and an
5 opportunity for a hearing, may place a utility under supervision
6 for gross or continuing mismanagement, gross or continuing
7 noncompliance with Chapter 13 [~~this-chapter~~] or commission rules,
8 or noncompliance with commission orders.

9 (b) While supervising a utility, the commission may require
10 the utility to:

11 (1) meet [~~abide---by~~] conditions and requirements
12 prescribed by the commission, including:

13 (A) [~~1~~] management requirements;
14 (B) [~~2~~] additional reporting requirements;
15 (C) [~~3~~] restrictions on hiring, salary or
16 benefit increases, capital investment, borrowing, stock issuance or
17 dividend declarations, and liquidation of assets; and

18 (D) [~~4~~] a requirement that the utility place
19 the utility's funds into an account in a financial institution
20 approved by the commission and use of those funds shall be
21 restricted to reasonable and necessary utility expenses; and[-]

22 (2) [~~(c)---While-supervising-a-utility,---the---commission~~
23 ~~may---require---that---the---utility~~] obtain commission approval before
24 taking an [~~any~~] action [~~that-may-be~~] restricted under Subdivision
25 (1) [~~Subsection-(b)~~] of this section.

26 (c) An [~~Any~~] action or transaction for which commission
27 approval is required by this section that [~~which~~] occurs without

1 commission approval may be voided by the commission.

2 Sec. 7.403 [~~13-4132~~]. OPERATION OF UTILITY THAT DISCONTINUES
3 OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. (a) The
4 commission, after providing to the utility notice and an
5 opportunity to be heard by the commissioners at a commission
6 meeting, may authorize a willing person to temporarily manage and
7 operate a utility if the utility:

8 (1) has discontinued or abandoned operations or the
9 provision of services; or

10 (2) has been or is being referred to the attorney
11 general for the appointment of a receiver under Section 7.401
12 [~~13-412~~].

13 (b) The commission may appoint a person under this section
14 by emergency order under Section 5.507 and may authorize an
15 emergency rate increase by emergency order under Section 5.508[~~7~~
16 ~~and--notice--of--the--action-is-adequate-if-the-notice-is-mailed-or~~
17 ~~hand-delivered--to--the--last--known--address--of--the--utility's~~
18 ~~headquarters~~].

19 (c) A person appointed under this section has the powers and
20 duties necessary to ensure the continued operation of the utility
21 and the provision of continuous and adequate services to customers,
22 including the power and duty to:

- 23 (1) read meters;
24 (2) bill for utility services;
25 (3) collect revenues;
26 (4) disburse funds;
27 (5) access all system components; and

1 (6) request rate increases.

2 (d) This section does not affect the authority of the
3 commission to pursue an enforcement claim against a utility or an
4 affiliated interest.

5 SECTION 24. Section 13.414, Water Code, is amended to read
6 as follows:

7 Sec. 13.414. VIOLATION BY [~~PENALTY--AGAINST~~] RETAIL PUBLIC
8 UTILITY OR AFFILIATED INTEREST. A [~~(a)-Any~~] retail public utility
9 or affiliated interest may not violate [~~that--violates~~] this
10 chapter, fail [~~fails~~] to perform a duty imposed on it, or fail,
11 neglect, [~~fails,-neglects,-~~] or refuse [~~refuses~~] to obey an order,
12 rule, direction, or requirement of the commission or decree or
13 judgment of a court [~~is-subject-to-a-civil-penalty-of-not-less-than~~
14 ~~\$100-nor-more-than-\$5,000-for-each-violation~~].

15 [~~(b)--A-retail-public-utility-or-affiliated-interest--commits~~
16 ~~a--separate--violation--each-day-it-continues-to-violate-Subsection~~
17 ~~(a)-of-this-section-~~

18 [~~(c)--The-attorney-general-shall-institute-suit--on--his--own~~
19 ~~initiative--or--at-the-request-of,-in-the-name-of,-and-on-behalf-of~~
20 ~~the-commission-in-a-court-of-competent-jurisdiction-to-recover--the~~
21 ~~penalty-under-this-section-~~]

22 SECTION 25. Section 13.417, Water Code, is transferred to
23 Subchapter B, Chapter 7, Water Code, renumbered as Section 7.034,
24 Water Code, and amended to read as follows:

25 Sec. 7.034 [~~13.417~~]. CONTEMPT PROCEEDINGS IN UTILITY ACTION.
26 If any person or retail public utility fails to comply with any
27 lawful order of the commission issued under Chapter 13 or with any

1 subpoena or subpoena duces tecum issued in a proceeding under
2 Chapter 13 or if any witness refuses to testify about any matter on
3 which he may be lawfully interrogated in a proceeding under Chapter
4 13, the commission may apply to any court of competent jurisdiction
5 to compel obedience by proceedings for contempt.

6 SECTION 26. Sections 35.008(b), (c), and (d), Water Code,
7 are amended to read as follows:

8 (b) The commission shall call a public comment [an
9 evidentiary] hearing to consider:

10 (1) the designation of a priority groundwater
11 management area;

12 (2) whether a district should be created over all or
13 part of a priority groundwater management area; or

14 (3) whether all or part of the land in the priority
15 groundwater management area should be added to an existing
16 district.

17 (c) Public comment [Evidentiary] hearings shall be held at a
18 location in one of the counties in which the priority groundwater
19 management area is located, or proposed to be located, or in the
20 nearest convenient location if adequate facilities are not
21 available in those counties.

22 (d) At the public comment hearing, the commission shall hear
23 testimony and receive evidence from affected persons. The
24 commission shall consider the executive director's report and
25 supporting information and the testimony and evidence received at
26 the public comment hearing. If the commission considers further
27 information necessary, the commission may request such information

1 from any source. Any testimony, evidence, report, comments, or
2 other information received by the commission at a public comment
3 hearing becomes part of the record of the contested case hearing on
4 designation of the priority groundwater management area, creation
5 of a district over all or part of the priority groundwater
6 management area, or addition of any part of the land in the
7 priority groundwater management area to an existing district.

8 SECTION 27. Chapter 35, Water Code, is amended by adding
9 Section 35.010 to read as follows:

10 Sec. 35.010. CREATION OF DISTRICTS ON PETITION AFTER
11 DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA. The
12 commission may not consider the creation of a groundwater
13 conservation district in a designated priority groundwater
14 management area before the conclusion of the next regular session
15 of the Texas Legislature following the designation unless the local
16 landowners have initiated a petition process under Chapter 36 for
17 the creation of a groundwater conservation district with a priority
18 groundwater management area.

19 SECTION 28. Section 35.012, Water Code, is amended by adding
20 new Subsections (c) and (d), relettering existing Subsections (c),
21 (d), (e), and (f) as Subsections (e), (f), (g), and (h), and
22 amending existing Subsection (d), to read as follows:

23 (c) Not later than the 10th day after the date on which the
24 commission order designating a priority groundwater management area
25 is issued, the commission shall send written notice of the
26 commission's actions to each landowner in the designated priority
27 groundwater management area at the landowner's most recent known

1 address as shown in the tax rolls of the county in which the land
2 is located. The notice must include the commission's findings and
3 conclusions from the data and information considered in designating
4 the priority groundwater management area and the commission's
5 recommendation regarding the need for a groundwater conservation
6 district in the priority groundwater management area.

7 (d) As soon as possible after a commission order designating
8 a priority groundwater management area, the Texas Agricultural
9 Extension Service shall begin an educational program within the
10 area with the assistance and cooperation of the Texas Water
11 Development Board, the commission, other state agencies, and
12 existing districts to inform the residents of the status of the
13 area's water resources and management options including possible
14 formation of a district.

15 (e) Following the issuance of a commission order under
16 Subsection (b), the landowners in the priority groundwater
17 management area may:

18 (1) create one or more districts under Subchapter B,
19 Chapter 36;

20 (2) have the area annexed to a district that adjoins
21 the area; or

22 (3) create one or more districts through the
23 legislative process.

24 (f) [†d†] The commission shall identify the areas subject to
25 the order of the commission issued under Subsection (b) that have
26 not been incorporated into a district and shall delineate proposed
27 boundaries of a district to include those areas. [†f--the

1 commission-proposes-the-creation-of--one--or--more--districts,--the
2 Texas--Agricultural--Extension--Service--shall-begin-an-educational
3 program-within-such-areas-with-the-assistance--and--cooperation--of
4 the--Texas--Water--Development--Board,--the-commission,--other-state
5 agencies,--and-existing-districts-to-inform--the--residents--of--the
6 status--of--the--area's--water--resources--and--management--options
7 including--possible--formation--of-a-district,--before-beginning-the
8 procedures-for-creation-of-a-district--provided--in--Subchapter--B,
9 Chapter-36.]

10 (g) [(e)] If the commission fails to find that the district
11 would be a benefit to the land and other property within the
12 priority groundwater management area, that there is a public need
13 for the district, or that creation of the district will further the
14 public welfare, the commission shall issue an order stating that a
15 district should not be created within the boundaries of the
16 priority groundwater management area.

17 (h) [(f)] An order of the commission issued under this
18 section may not be appealed.

19 SECTION 29. Section 36.014, Water Code, is amended to read
20 as follows:

21 Sec. 36.014. NOTICE AND HEARING ON DISTRICT CREATION. [(a)]
22 If a petition is filed under Section 36.013 or the commission
23 proposes that a district be created under Section 35.012(b), the
24 commission shall give notice of the [(a)] application or proposal as
25 required by Section 49.011(a) and may conduct a hearing on the
26 application or proposal if the commission determines that a hearing
27 is necessary under Section 49.011.

1 [~~(b)---If---the---petition---contains---a---request---to---create---a~~
2 ~~management-area-in-all-or-part-of-the-proposed-district,--the-notice~~
3 ~~must-also-be-given-in-accordance-with-the-requirements--in--Section~~
4 ~~35-006-for-the-designation-of-management-areas-]~~

5 SECTION 30. Section 36.015, Water Code, is amended to read
6 as follows:

7 Sec. 36.015. FINDINGS. (a) If the commission finds that a
8 district requested by petition or proposed by the commission is
9 feasible and practicable, [~~that-it~~] would be a benefit to the land
10 in the district, and [~~that--it~~] would be a public benefit or
11 utility, the commission shall issue an order containing these
12 findings granting the petition or adopting the proposal, as
13 appropriate.

14 (b) If the commission finds that a district is not feasible
15 and practicable, that it would not be a benefit to the land in the
16 district, that it would not be a public benefit or utility, or that
17 it is not needed, the commission by order shall deny the petition
18 or reject the proposal, as appropriate.

19 (c) The commission may adjust the boundaries of the proposed
20 district to exclude any land that would not be benefited by
21 inclusion in the district and is not necessary to the district for
22 proper regulation of the groundwater reservoir.

23 (d) If the commission grants the petition or adopts the
24 proposal to create the district, it shall direct in its order
25 creating the district that an election be called by the temporary
26 directors to confirm the creation of the district and to elect
27 permanent directors.

1 (e) ~~[The refusal to grant a petition to create a district~~
2 ~~does not invalidate or affect the designation of any management~~
3 ~~area requested in the same petition.~~

4 [~~f~~] The commission shall act on the petition or its
5 proposal within a reasonable amount of time.

6 SECTION 31. Subchapter D, Chapter 36, Water Code, is amended
7 by adding Section 36.1074 to read as follows:

8 Sec. 36.1074. EXTENSION OF DISTRICT AUTHORITY TO ADDITIONAL
9 AQUIFERS WITHIN DISTRICT'S GEOGRAPHIC BOUNDARIES. (a) The
10 commission by rule shall establish a procedure by which a district
11 created by special law may petition to extend the district's
12 authority to include management of any aquifer within the
13 geographic boundaries of the district the management of which is
14 not provided for by the special law creating any district.

15 (b) Rules adopted by the commission under this section shall
16 establish grounds for a petition described by Subsection (a),
17 including:

18 (1) a change in pumping conditions;
19 (2) a change in water quality conditions;
20 (3) a finding that another aquifer is affecting water
21 levels in the primary managed aquifer; and

22 (4) other grounds the commission may specify.

23 (c) A petition under this section may be granted only by
24 order of the commission.

25 SECTION 32. Section 36.0151, Water Code, is amended to read
26 as follows:

27 Sec. 36.0151. NOTICE OF CREATION BY COMMISSION OF DISTRICT

1 FOR PRIORITY GROUNDWATER MANAGEMENT AREA. [~~a~~]~~--if the--commission~~
2 ~~proposes--that--a--district--be-created-under-Section-35.012(d), it~~
3 ~~shall-in-its-order-creating-the--district--provide--that--temporary~~
4 ~~directors-be-appointed-under-Section-36.016-and-that-an-election-be~~
5 ~~called--by--the--temporary-directors-to-confirm-the-creation-of-the~~
6 ~~district-and-to-elect-permanent-directors.~~

7 [~~b~~] The commission shall notify the county commissioners
8 court of each county with territory in the district of the
9 district's creation as soon as practicable after issuing the order
10 under Section 36.015(a) creating a [the] district proposed by the
11 commission under Section 35.012(b).

12 SECTION 33. Section 36.108, Water Code, is amended to read
13 as follows:

14 Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA OR PRIORITY
15 GROUNDWATER MANAGEMENT AREA. (a) If two or more districts are
16 located within the boundaries of the same management area or
17 priority groundwater management area, each district shall prepare a
18 comprehensive management plan as required by Section 36.1071
19 covering that district's respective territory. On completion of
20 the plan, each district shall forward a copy of the new revised
21 management plan to the other districts in the management area or
22 priority groundwater management area.

23 (b) The board of directors of each district in the
24 management area or priority groundwater management area may, by
25 resolution, call a joint meeting with the boards of directors of
26 the other districts in the management area or priority groundwater
27 management area to review the management plans and accomplishments

1 for the management area or priority groundwater management area.
2 The boards shall meet to consider the plans individually and shall
3 compare them to other management plans then in force in the
4 management area. In reviewing the management plans, the boards
5 shall consider:

6 (1) the goals of each management plan and its impact
7 on planning throughout the management area or priority groundwater
8 management area;

9 (2) the effectiveness of the measures established by
10 each management plan for conserving and protecting groundwater and
11 preventing waste, and the effectiveness of these measures in the
12 management area or priority groundwater management area generally;
13 and

14 (3) any other matters that the boards consider
15 relevant to the protection and conservation of groundwater and the
16 prevention of waste in the management area or priority groundwater
17 management area.

18 (c) A joint meeting of the boards of directors must be held
19 in accordance with the Open Meetings Act, Chapter 551, Government
20 Code. Notice of the meeting shall be given in accordance with the
21 requirements for notice of district board of directors meetings
22 under that Act. In addition, notice of the meeting shall be
23 published not later than the 30th day before the date of the
24 scheduled meeting in a newspaper with general circulation in each
25 county in the management area or priority groundwater management
26 area.

27 (d) A district in the management area or priority

1 groundwater management area may file a petition with the commission
2 requesting an inquiry if the petitioner district believes that:

3 (1) another district in the management area or
4 priority groundwater management area has failed to adopt rules;

5 (2) the groundwater in the management area or priority
6 groundwater management area is not adequately protected by the
7 rules adopted by another district; or

8 (3) the groundwater in the management area or priority
9 groundwater management area is not adequately protected due to the
10 failure of another district to enforce substantial compliance with
11 its rules.

12 (e) Not later than the 90th day after the date the petition
13 is filed, the commission shall review the petition and either:

14 (1) dismiss it if it finds that the evidence is not
15 adequate to show that any of the conditions alleged in the petition
16 exist; or

17 (2) select a review panel as provided in Subsection
18 (f).

19 (f) The commission may appoint a review panel consisting of
20 a chairman and four other members. A director or general manager
21 of a district located outside the management area or priority
22 groundwater management area that is the subject of the petition may
23 be appointed to the review panel. The commission may not appoint
24 more than two members of the review panel from any one district.
25 The commission also shall appoint a disinterested person to serve
26 as a nonvoting recording secretary for the review panel. The
27 recording secretary may be an employee of the commission. The

BILL ANALYSIS

Senate Research Center
76R3732 MI-D

S.B. 1311
By: Brown
Natural Resources
3/29/1999
As Filed

DIGEST

The 75th Texas Legislature established a comprehensive framework for planning the development and management of the state's water resources in Senate Bill 1. The consolidation of such authority relating to water rights and water utilities was intentionally avoided so as not to interfere with changes to those provisions in S.B. 1. The Interim Committee on Water Resource Development and Management, through its monitoring of the implementation of S.B. 1 also developed recommendations pertaining to the related activities of the Texas Natural Resource Conservation Commission (commission) under S.B.1, including the process for creating priority groundwater management areas and groundwater conservation districts. S.B. 1311 consolidates the emergency order and enforcement authorities of the commission related to water rights and water utilities.

PURPOSE

As proposed, S.B. 1311 regulates development and management of water resources.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTION 2 (Sections 5.517(d) and Section 5.518(d), Water Code), SECTION 17 (Section 11.138(a), Water Code), and SECTION 31 (Section 36.1074(a), Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.504(a), Water Code, to require an emergency order to set a time for the hearing not later than the 20th day after the date the emergency order is issued, if the emergency order is issued under Section 5.517 or 5.518.

SECTION 2. Amends Chapter 5L, Water Code, by adding Section 5.517, 5.518, 5.519, and 5.520, as follows:

Sec. 5.517. EMERGENCY PERMIT TO DIVERT AND USE WATER; AMENDMENT TO WATER RIGHT. Authorizes the Texas Natural Resource Conservation Commission (commission) by emergency order to issue a permit to divert and use water or amend an existing permit, certified filing, or certificate of adjudication for an initial period not to exceed 120 days if the commission finds that certain actions have taken place, except as provided by Section 5.506 and after notification to the governor. Authorizes the executive director to issue an emergency order if an imminent threat to the public health, safety, and welfare or the environment exists that requires emergency action before the commission can take action under Subsection (a) and there is no feasible alternative. Requires the commission to hold hearing as provided for in Section 5.504 as soon as practicable but, not later than a certain date after issuance of the order to affirm, modify, or set aside the order, the executive director issues an emergency order under this subsection. Requires the person desiring the emergency to comply with Section 5.502 before the executive director may act on the request for emergency action. Provides that the notice requirements of Section 11.132 relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an application for an emergency order under this section. Requires the commission to give the general notice of the hearing that the commission considers practicable under the circumstances. Authorizes the commission to adopt rules and impose fees necessary to carry out the provisions of this section. Provides that an emergency order under this section does not vest in the grantee of any right to the diversion, impoundment, or use of water and expires by its terms.

Sec. 5.518. EMERGENCY ORDER FOR TEMPORARY TRANSFER OF USE OF WATER RIGHT. Authorizes the commission by emergency order to grant the temporary transfer and use of all or part of a surface water right for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety purposes. Authorizes the commission to direct the applicant to timely pay the amounts for which the applicant may be potentially liable under this section and to fully indemnify and hold harmless the state, executive director, and the commission from any and all liability for the order sought. Authorizes the commission to order bond or other surety in a form acceptable to the commission as a condition for an emergency order under this section. Prohibits the commission from granting an emergency authorization under this section that would cause a violation of a federal regulation. Provides that a person granted an emergency authorization under this section is liable to the owner from whom the use is transferred and for any damages proximately caused by the transfer of use. Authorizes either party to file a complaint with the commission to determine the amount due, if, within 60 days of the termination of the order, the parties do not agree on the amount due, or if full payment is not made. Requires the commission, by rule, to establish a dispute resolution procedure for a complaint filed under this section. Authorizes an owner from whom the use is transferred to file suit to recover or determine the amount due in a district court in the county where the owner resides or has its headquarters. Provides that the prevailing party in a suit filed under this subsection is entitled to recover court cost and reasonable attorney's fees.

Sec. 5.519. EMERGENCY WORKS SAFETY ORDER. Authorizes the commission to issue a mandatory or prohibitory emergency order directing the owner of a dam, levee, or other water-storage or flood control work to repair, modify, maintain, dewater, or remove a work if the commission finds certain conditions exist.

Sec. 5.520. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. Authorizes the commission to issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 7.403. Provides that notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 3. Amends Section 7.004, Water Code, to provide that nothing in this chapter affects the right of a private corporation, individual, or political subdivision that has a justiciable interest to pursue any available common law remedy to enforce a right, to abate a condition of pollution or other nuisance, to recover damages to enforce a right, or to prevent or seek redress or compensation for violation of a right or otherwise redress an injury.

SECTION 4. Amends Chapter 7B, Water Code, by adding Section 7.034, as follows:

Sec. 7.034. ATTORNEY'S FEES; COSTS. Authorizes a district court to award the cost of litigation, including reasonable attorney's fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of Chapter 11 or a rule adopted under Chapter 11.

SECTION 5. Amends Section 7.051(b), Water Code, to provide that except as provided by this subsection, this subchapter does not apply to violations of Chapter 12, 13, 16, or 36. Provides that this chapter does apply to Section 16.236. Deletes text regarding Chapter 11 and Chapter 341, Health and Safety Code. Makes a conforming change.

SECTION 6. Amends Section 7.052, Water Code, to set forth certain penalties for violations. Makes conforming changes.

SECTION 7. Amend Section 7.054, Water Code, to require a report regarding a possible violation under Chapter 11 to state the facts on which the conclusion was based and recommend the amount of any penalty. Requires the executive director to base the recommended amount of the proposed penalty on the factors provided by Section 7.053 and to analyze each factor for the benefit of the commission.

SECTION 8. Amends Section 7.069, Water Code, to require a penalty collected under this subchapter to be deposited to the credit of the general revenue fund, except as provided by Subsection (b). Requires a penalty collected under this subchapter from a public utility to be paid to the commission and deposited

in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 9. Amends Chapter 7B, Water Code, by adding Section 7.076, as follows:

Sec. 7.076. COMPROMISE, MODIFICATION, OR REMISSION OF CERTAIN PENALTIES. Authorizes the commission, notwithstanding any other provision to the contrary, to compromise, modify, or remit, with or without condition, any penalty imposed under this subchapter for a violation under Chapter 11.

SECTION 10. Amends Section 7.102, Water Code, to prohibit the amount of a penalty for a violation of a rule under Section 12.052 from exceeding \$5000. Requires a person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 11, to be assessed for each violation a civil penalty not less than \$100 nor greater than \$5,000 for each day of each violation as the court or jury considers proper.

SECTION 11. Amends Sections 7.1059(a) and (c), Water Code, to authorize the attorney general to initiate a suit for recovery of a penalty under this section for a violation under Section 13.414. Authorizes the suit to be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs, except as provided by this subsection. Authorizes a suit to recover a penalty for a violation of a rule or order issued by the commission under Section 12.052 to be brought in Travis County.

SECTION 12. Amends Chapter 7D, Water Code, by adding Section 7.1075, as follows:

Sec. 7.1075. DISPOSITION OF PENALTY COLLECTED FROM PUBLIC UTILITY. Requires a penalty collected under this subchapter from a public utility to be paid to the commission and deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 13. Amends Chapter 7D, Water Code, by adding Section 7.112, as follows:

Sec. 7.112. LIMITATION ON SUIT FOR VIOLATION OF SECTION 11.082. Requires an action to collect the penalty provided by Section 7.102 for a violation of Section 11.082 to be brought within two years from the date of the alleged violation.

SECTION 14. Amends Section 7.351, Water Code, to make a conforming change.

SECTION 15. Amends Section 11.0843, Water Code, by transferring it to Chapter 7C, Water Code, and renumbering it as Section 7.077, to delete text requiring a penalty collected under this section to be deposited in the state treasury to the credit of the general revenue fund. Makes conforming changes,

SECTION 16. Amends Section 11.085, Water Code, by adding Subsection (w), to provide that the requirements of this section apply to the transfer of water from one river basin to another regardless of whether all or any part of the water right, permit, certified filing, or certificate of adjudication under which the water is authorized to be used is also transferred.

SECTION 17. Amends Section 11.138(a), Water Code, to authorize the commission, by rule, to authorize the beneficial use, without a permit, of not more than 25 acre-feet of water, for a term not to exceed one year, if the diversion of water will not affect existing water right holders and the user of the water registers the use with the commission in the manner required by the commission.

SECTION 18. Amends Section 11.139, Water Code, to authorize the commission to grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication under Subchapter L, Chapter 5. Deletes text regarding emergency authorizations.

SECTION 19. Amends Section 11.173(b), Water Code, to provide that a permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) if it was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder and consistent with projections of future water needs contained in the state water plan or if it was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified

filing, or certificate of adjudication as part of the holder's long-term planning.

SECTION 20. Amends Section 11.177(b), Water Code, to make conforming changes.

SECTION 21. Amends Sections 12.052(c), (d), (e) and (f), Water Code, to prohibit the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section from wilfully failing or refusing to comply within the 30-day period following the date of the commission's final, nonappealable order to do so and from wilfully failing to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order. Authorizes the commission to issue an emergency works safety order under Section 5.519. Deletes text regarding existing conditions of a dam. Makes conforming changes.

SECTION 22. Amends Section 13.411, Water Code, by transferring it to Chapter 7B, Water Code, and renumbering it as Section 7.0325, as follows:

Sec. 7.0325. New heading: ACTION TO ENJOIN OR REQUIRE COMPLIANCE: RETAIL PUBLIC UTILITIES. Makes conforming changes.

SECTION 23. Amends Chapter 7, Water Code, by adding Subchapter I, and Sections 13.412, 13.4131, and 13.4132, Water Code, transferred to Chapter 7I, Water Code, redesignated as Section 7.401, 7.402, and 7.403, as follows:

SUBCHAPTER I. RECEIVERSHIP; SUPERVISION OF CERTAIN UTILITIES

Sec. 7.401. RECEIVERSHIP. Makes a conforming change.

Sec. 7.402. SUPERVISION OF CERTAIN UTILITIES. Authorizes the commission to require the utility to meet, rather than abide by, conditions and requirements prescribed by the commission and to obtain commission approval before taking an action under Subdivision (1), rather than Subsection (b), of this section. Authorizes an action or transaction for which commission approval is required by this section that occurs without commission approval to be void by the commission. Deletes text regarding the commission's supervision of a utility. Makes conforming and nonsubstantive changes.

Sec. 7.403. OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. Authorizes the commission to appoint a person under this section by emergency order under Section 5.507 and to authorize an emergency rate increase by emergency order under Section 5.508, rather than notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 24. Amends Section 13.414, Water Code, as follows:

Sec. 13.414. New heading: VIOLATION BY RETAIL PUBLIC UTILITY OR AFFILIATE INTEREST. Prohibits a retail public utility or affiliated interest from violating this chapter, failing to perform a duty imposed on it, or failing, neglect, or refusing to obey an order, rule, direction, or requirement of the commission or decree or judgment of a court. Deletes text regarding civil penalty. Makes conforming changes.

SECTION 25. Amends Section 13.417, Water Code, by transferring it to Chapter 7B, Water Code, renumbered as Section 7.034, Water Code, as follows:

Sec. 7.034. New heading: CONTEMPT PROCEEDINGS IN UTILITY ACTION. Makes conforming changes.

SECTION 26. Amends Sections 35.008(b), (c), and (d), Water Code, to require the commission to call a public comment, rather than evidentiary hearing, to consider certain actions. Provides that any testimony, evidence, report, comment, or other information received by the commission at a public comment hearing becomes part of the record of the contested case hearing on designation of the priority groundwater management area, creation of a district over all or part of the priority groundwater management area, or addition of any part of the land in the priority groundwater management area to an existing district.

SECTION 27. Amends Chapter 35, Water Code, by adding Section 35.010, as follows:

Sec. 35.010. CREATION OF DISTRICTS ON PETITION AFTER DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA. Prohibits the commission from considering the creation of a groundwater conservation district in a designated priority groundwater management area before the conclusion of the next regular session of the Texas Legislature following the designation unless the local landowners have initiated a petition process under Chapter 36 for the creation of a groundwater conservation district with a priority groundwater management area.

SECTION 28. Amends Section 35.012, Water Code, by adding new Subsections (c) and (d) and amending existing Subsection (d), to require the commission not later than a certain date on which the commission order designating a priority groundwater management area is issued, to send a written notice of the commission's actions to each landowner in the designation priority groundwater management area at the landowner's most recent known address as shown in the tax rolls of the county in which the land is located. Requires the notice to include the commission's findings and conclusions from the data and information considered in designating the priority groundwater management area and the commission's recommendation regarding the need for a groundwater conservation district in the priority groundwater management area. Requires the Texas Agricultural Extension Service to begin an educational program within the area with the assistance and cooperation of the Texas Water Development Board, the commission, other state agencies, and existing districts to inform the residents of the status of the area's water resources and management options including possible formation of a district. Makes conforming changes.

SECTION 29. Amends Section 36.014, Water Code, to require the commission to give notice of the application or proposal as required by Section 49.011(a) and may conduct a hearing on the application or proposal if the commission determines that a hearing is necessary under Section 49.011. Deletes text regarding management areas.

SECTION 30. Amends Section 36.015, Water Code, to require the commission to issue an order containing findings granting the petition or adopting the proposal, as appropriate, if the commission finds that a district requested by petition or proposed by the commission is feasible and practicable, a benefit to the land in the district, and would be a public benefit or utility. Requires the commission by order to deny the petition or reject the proposal, as appropriate. Requires the commission to direct in its orders creating the district that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors, if the commission grants the petition or adopts the proposal. Requires the commission to act on the petition or its proposal within a reasonable amount of time. Deletes text regarding the refusal to grant a petition.

SECTION 31. Amends Chapter 36D, Water Code, by adding Section 36.1074, as follows:

Sec. 36.1074. EXTENSION OF DISTRICT AUTHORITY TO ADDITIONAL AQUIFERS WITHIN DISTRICT'S GEOGRAPHIC BOUNDARIES. Requires the commission, by rule, to establish a procedure by which a district created by special law may petition to extend the district's authority to include management of any aquifer within the geographic boundaries of the district the management of which is not provided for by the special law creating any district. Requires the rules adopted by the commission under this section to establish grounds for a petition described by Subsection (a) including certain conditions. Authorizes a petition under this section to be granted only by order of the commission.

SECTION 32. Amends Section 36.0151, Water Code, as follows:

Sec. 36.0151. New heading: NOTICE OF CREATION BY COMMISSION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA. Requires the commission to notify the county commissioners court of each county with territory in the district of the district's creation as soon as practicable after issuing the order under Section 36.015(a) creating a district proposed by the commission under Section 35.012(b).

SECTION 33. Amends Section 36.108, Water Code, as follows:

Sec. 36.108. New heading: JOINT PLANNING IN MANAGEMENT AREA OR PRIORITY

GROUNDWATER MANAGEMENT AREA. Requires each district to prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory, if two or more districts are located within the boundaries of the same management area or priority groundwater management area. Making conforming changes.

SECTION 34. Amends Section 341.047, Health and Safety Code, by transferring it to Chapter 7E, Water Code, redesignating it as Section 7.1605, Water Code, as follows:

Sec. 7.1605. New heading: VIOLATIONS RELATING TO PUBLIC DRINKING WATER.
Makes conforming changes.

SECTION 35. Amends Section 341.048, Health and Safety Code, as follows:

Sec. 341.048. New heading: VIOLATION. Deletes text regarding certain violations.

SECTION 36. (a) Repealer: (1) Section 11.082, Water Code (Unlawful Use: Civil Penalty).
(2) Section 11.0841, Water Code (Civil Remedy) and Section 11.0842, Water Code (Administrative Penalty).
(3) Section 13.4151, Water Code (Administrative Penalty) and Section 13.416, Water Code (Penalties Cumulative).
(4) Section 35.004, Water Code (Designation of Management Areas), Section 35.005, Water Code (Petition to Designate a Groundwater Management Area), and Section 35.006, Water Code (Notice for Designation of Management Area).

(b) Section 341.049 Health and Safety Code (Administrative Penalty) and Section 341.050, Health and Safety Code (Penalties Cumulative).

SECTION 37. Effective date: September 1, 1999.

SECTION 38. Makes application of this Act prospective.

SECTION 39. Emergency clause.

By: Brown S.B. No. 1311
(In the Senate - Filed March 11, 1999; March 15, 1999, read first time and referred to Committee on Natural Resources; April 6, 1999, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; April 6, 1999, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1311

By: Brown

A BILL TO BE ENTITLED
AN ACT

relating to the development and management of the water resources.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 5.504, Water Code, is amended to read as follows:

(a) If the commission, the executive director, or the executive director's representative issues an emergency order under this subchapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the emergency order to be held before the commission or its designee as soon as practicable after the order is issued. If the emergency order is issued under Section 5.517 or 5.518, the order shall set a time for the hearing not later than the 20th day after the date the emergency order is issued.

SECTION 2. Subchapter L, Chapter 5, Water Code, is amended by adding Sections 5.517, 5.518, 5.519, and 5.520 to read as follows:

Sec. 5.517. EMERGENCY PERMIT TO DIVERT AND USE WATER; AMENDMENT TO WATER RIGHT. (a) Except as provided by Section 5.506 and after notification to the governor, the commission by emergency order may issue a permit to divert and use water or amend an existing permit, certified filing, or certificate of adjudication for an initial period not to exceed 120 days if the commission finds that:

(1) emergency conditions exist that present an imminent threat to the public health, safety, and welfare or the environment and that override the necessity to comply with established statutory procedures; and

(2) there is no feasible practicable alternative to the emergency authorization. The emergency authorization may be renewed once for a period not to exceed 60 days.

(b) The executive director may issue an emergency order if an imminent threat to the public health, safety, and welfare or the environment exists that requires emergency action before the commission can take action under Subsection (a) and there is no feasible alternative. If the executive director issues an emergency order under this subsection, the commission shall hold a hearing as provided for in Section 5.504 as soon as practicable but not later than 20 days after issuance of the order to affirm, modify, or set aside the order.

(c) The notice requirements of Section 11.132 relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an application for an emergency order under this section. The commission shall give the general notice of the hearing that the commission considers practicable under the circumstances.

(d) The commission may adopt rules and impose fees necessary to carry out the provisions of this section.

(e) An emergency order under this section does not vest in the grantee any right to the diversion, impoundment, or use of water and expires by its terms.

Sec. 5.518. EMERGENCY ORDER FOR TEMPORARY TRANSFER OF USE OF WATER RIGHT. (a) The commission by emergency order may grant the temporary transfer and use of all or part of a surface water right for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety purposes.

(b) The commission may direct the applicant to timely pay the amounts for which the applicant may be potentially liable under this section and to fully indemnify and hold harmless the state, the executive director, and the commission from any and all liability for the order sought. The commission may order bond or other surety in a form acceptable to the commission as a condition for an emergency order under this section. The commission may not grant an emergency authorization under this section that would cause a violation of a federal regulation.

(c) In transferring the amount of water requested by the applicant, the executive director or the commission shall allocate the requested amount among two or more permits, certified filings, or certificates of adjudication for other than domestic or municipal use.

(d) A person granted an emergency order under this section is liable to the owner from whom the use is transferred for the fair market value of the water transferred and for any damages proximately caused by the transfer of use. If, within 60 days of the termination of the order, the parties do not agree on the amount due, or if full payment is not made, either party may file a complaint with the commission to determine the amount due.

(e) The commission by rule shall establish a dispute resolution procedure for a complaint filed under this section. After exhausting all administrative remedies under this section, an owner from whom the use is transferred may file suit to recover or determine the amount due in a district court in the county where the owner resides or has its headquarters. The prevailing party in a suit filed under this subsection is entitled to recover court costs and reasonable attorney's fees.

Sec. 5.519. EMERGENCY WORKS SAFETY ORDER. The commission may issue a mandatory or prohibitory emergency order directing the owner of a dam, levee, or other water-storage or flood-control work to repair, modify, maintain, dewater, or remove a work if the commission finds that:

(1) the existing condition of the work is causing or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health; and

(2) other procedures available to the commission to remedy or prevent the occurrence will result in unreasonable delay.

Sec. 5.520. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. The commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 7.404. Notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 3. Section 7.004, Water Code, is amended to read as follows:

Sec. 7.004. REMEDIES CUMULATIVE. The remedies under this chapter are cumulative of all other remedies. Nothing in this chapter affects the right of a private corporation, [or] individual, or political subdivision that has a justiciable interest to pursue any available common law remedy to enforce a right, to abate a condition of pollution or other nuisance, to recover damages to enforce a right, or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

SECTION 4. Subchapter B, Chapter 7, Water Code, is amended by adding Section 7.034 to read as follows:

Sec. 7.034. ATTORNEY'S FEES; COSTS. A district court may award the costs of litigation, including reasonable attorney's fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of Chapter 11 or a rule adopted under Chapter 11.

SECTION 5. Subsection (b), Section 7.051, Water Code, is amended to read as follows:

(b) Except as provided by this subsection, this [This] subchapter does not apply to violations of Chapter [117] 12 or [7 137] 16[7-or-36-of-this-code-or-Chapter--341--Health--and--Safety Code]. This subchapter does apply to Section 16.236.

SECTION 6. Section 7.052, Water Code, is amended to read as follows:

Sec. 7.052. MAXIMUM PENALTY. (a) The amount of the penalty for a violation of Chapter 18, 32, 33, or 34 of this code or Chapter 366, 371, or 372, Health and Safety Code, may not exceed \$2,500 a day for each violation.

(b) The amount of the penalty for a violation of Chapter 11 or a rule or order adopted under or a permit, certified filing, or certificate of adjudication issued under Chapter 11 may not exceed \$5,000 a day for each violation.

(c) The penalty for a violation of a rule or order adopted under Section 16.236 may not exceed \$1,000 a day for each violation.

(d) The amount of the penalty for a violation under Chapter 341, Health and Safety Code, may not be less than \$50 or more than \$1,000 for each violation.

(e) The amount of the penalty for all other violations within the jurisdiction of the commission to enforce may not exceed \$10,000 a day for each violation.

(f) ~~[(e)]~~ Each day that a continuing violation occurs may be considered a separate violation. The commission may authorize an installment payment schedule for an administrative penalty assessed under this subchapter, except for an administrative penalty assessed under Section 7.057 or assessed after a hearing under Section 7.058.

SECTION 7. Section 7.054, Water Code, is amended to read as follows:

Sec. 7.054. REPORT OF VIOLATION. (a) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report in accordance with commission rules that includes recommendations regarding any penalty or corrective action.

(b) A report regarding a possible violation under Chapter 11 must state the facts on which the conclusion was based and recommend the amount of any penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Section 7.053 and shall analyze each factor for the benefit of the commission.

SECTION 8. Section 7.069, Water Code, is amended to read as follows:

Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as provided by Subsection (b), a [A] penalty collected under this subchapter shall be deposited to the credit of the general revenue fund.

(b) A penalty collected under this subchapter from a public utility shall be paid to the commission and deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 9. Section 7.102, Water Code, is amended to read as follows:

Sec. 7.102. MAXIMUM PENALTY. (a) A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 11, 18, 32, 33, or 34 of this code or Chapter 366, 371, or 372, Health and Safety Code, shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$5,000 for each day of each violation as the court or jury considers proper.

(b) The amount of a penalty for a violation of a rule or order issued by the commission under Section 12.052 may not exceed \$5,000.

(c) A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 13 shall be assessed for each violation a civil penalty not less than \$100 nor greater than \$5,000 for each day of each violation as the court or jury considers proper.

(d) A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, other than violations of Chapter [117]12 or [7-137] 16[7-or--36] of this code, or Chapter 341, Health and Safety Code, shall be assessed for each violation of a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation as the court or jury considers proper.

(e) Each day of a continuing violation is a separate violation.

SECTION 10. Subsections (a) and (c), Section 7.105, Water Code, are amended to read as follows:

(a) On the request of the executive director or the commission, the attorney general shall institute a suit in the name of the state for injunctive relief under Section 7.032, to recover a civil penalty, or for both injunctive relief and a civil penalty. The attorney general may initiate a suit for recovery of a penalty under this section for a violation under Section 13.414.

(c) Except as provided by this subsection, the [The] suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs. A suit to recover a penalty for a violation of a rule or order issued by the commission under Section 12.052 may be brought in Travis County.

SECTION 11. Subchapter D, Chapter 7, Water Code, is amended by adding Section 7.1075 to read as follows:

Sec. 7.1075. DISPOSITION OF PENALTY COLLECTED FROM PUBLIC UTILITY. A penalty collected under this subchapter from a public utility shall be paid to the commission and deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 12. Subchapter D, Chapter 7, Water Code, is amended by adding Section 7.112 to read as follows:

Sec. 7.112. LIMITATION ON SUIT FOR VIOLATION OF SECTION 11.081. An action to collect the penalty provided by Section 7.102 for a violation of Section 11.081 must be brought within two years from the date of the alleged violation.

SECTION 13. Section 7.351, Water Code, is amended to read as follows:

Sec. 7.351. CIVIL SUITS. If it appears that a violation or threat of violation of Chapter 16, 26, 28, or 34 of this code or Chapter 341, 361, 371, 372, or 382, Health and Safety Code, or a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

SECTION 14. Section 11.0843, Water Code, is amended to read as follows:

Sec. 11.0843. FIELD CITATION. [a] Upon witnessing a violation of this chapter or a rule or order or a water right issued under this chapter, a watermaster or the watermaster's deputy, as defined by commission rule, may issue the alleged violator a field citation alleging that a violation has occurred [and-providing-the-alleged-violator-the-option-of-either-

[1]--without--admitting--to--or--denying--the--alleged violation,--paying-an-administrative-penalty-in-accordance-with-the predetermined-penalty-amount-established-under--Subsection--(b)--of this--section--and--taking--remedial--action--as--provided--in--the citation;--or

[2]--requesting--a-hearing-on-the-alleged-violation-in accordance-with-Section-11.0842-of-this-code-

[b]--By-rule-the-commission-shall-establish-penalty--amounts

corresponding--to--types--of--violations--of--this--chapter--or--rules--or
orders--adopted--or--water--rights--issued--under--this--chapter-

[~~(c)~~--A--penalty--collected--under--this--section--shall--be
deposited--in--the--state--treasury--to--the--credit--of--the--general
revenue--fund].

SECTION 15. Section 11.085, Water Code, is amended by adding
Subsection (w) to read as follows:

(w) The requirements of this section apply to the transfer
of water from one river basin to another regardless of whether all
or any part of the water right, permit, certified filing, or
certificate of adjudication under which the water is authorized to
be used is also transferred.

SECTION 16. Subsection (a), Section 11.138, Water Code, is
amended to read as follows:

(a) The commission may issue temporary permits for
beneficial purposes to the extent that they do not interfere with
or adversely affect prior appropriations or vested rights on the
stream from which water is to be diverted under such temporary
permit. The commission may, by appropriate order, authorize any
member of the commission to approve and issue temporary permits
without notice and hearing if it appears to such issuing party that
sufficient water is available at the proposed point of diversion to
satisfy the requirements of the temporary permit as well as all
existing rights. No temporary permit issued without notice and
hearing shall authorize more than 10 acre-feet of water, nor may it
be for a term in excess of one year. The commission by rule may
authorize the beneficial use, without a permit, of not more than 25
acre-feet of water, for a term not to exceed one year, if the
diversion of water will not affect existing water right holders and
the user of the water registers the use with the commission in the
manner required by the commission.

SECTION 17. Section 11.139, Water Code, is amended to read
as follows:

Sec. 11.139. EMERGENCY AUTHORIZATIONS. [~~(a)~~] Except as
provided by Section 5.506 [~~11-148~~] of this code, the commission may
grant an emergency permit, order, or amendment to an existing
permit, certified filing, or certificate of adjudication under
Subchapter L, Chapter 5 [~~after--notice--to--the--governor--for--an
initial--period--of--not--more--than--120--days--if--the--commission--finds
that--emergency--conditions--exist--which--present--an--imminent--threat--to
the--public--health--and--safety--and--which--override--the--necessity--to
comply--with--established--statutory--procedures--and--there--are--no
feasible--practicable--alternatives--to--the--emergency--authorization--
Such--emergency--action--may--be--renewed--once--for--not--longer--than--60
days~~].

[~~(b)~~--A--person--desiring--to--obtain--an--emergency--authorization
under--this--section--shall--submit--to--the--commission--a--sworn
application--containing--the--following--information:

[~~(1)~~--a--description--of--the--condition--of--emergency
justifying--the--granting--of--the--emergency--authorization;

[~~(2)~~--a--statement--setting--forth--facts--which--support--the
findings--required--under--this--section;

[~~(3)~~--an--estimate--of--the--dates--on--which--the--proposed
authorization--should--begin--and--end;

[~~(4)~~--a--description--of--the--action--sought--and--the
activity--proposed--to--be--allowed,--mandated,--or--prohibited;--and

[~~(5)~~--any--other--statements--or--information--required--by
the--commission-

[~~(c)~~--If--the--commission--finds--the--applicant's--statement--made
under--Subsection--(b)--of--this--section--to--be--correct,--the--commission
may--grant--emergency--authorizations--under--this--section--without
notice--and--hearing--or--with--such--notice--and--hearing--as--the
commission--considers--practicable--under--the--circumstances-

[~~(d)~~--If--the--commission--grants--an--emergency--authorization
under--this--section--without--a--hearing,--the--authorization--shall--fix--a
time--and--place--for--a--hearing--to--be--held--before--the--commission.--The
hearing--shall--be--held--as--soon--after--the--emergency--authorization--is
granted--as--is--practicable--but--not--later--than--20--days--after--the
emergency--authorization--is--granted-

6-1 [(e) -- At the hearing, the commission shall affirm, modify, or
 6-2 set aside the emergency authorization. -- Any hearing on an emergency
 6-3 authorization shall be conducted in accordance with Chapter 200 of
 6-4 Government Code, and rules of the commission.

6-5 [(f) -- If an imminent threat to the public health and safety
 6-6 exists which requires emergency action before the commission can
 6-7 take action as provided by Subsections (a) through (c) of this
 6-8 section and there are no feasible alternatives, the executive
 6-9 director may grant an emergency authorization after notice to the
 6-10 governor. -- If the executive director issues an emergency
 6-11 authorization under this subsection, the commission shall hold a
 6-12 hearing as provided for in Subsections (d) and (e) of this section.
 6-13 The requirements of Subsection (b) of this section shall be
 6-14 satisfied by the applicant before action is taken by the executive
 6-15 director on the request for emergency authorization.

6-16 [(g) -- The requirements of Section 11.132 of this code
 6-17 relating to the time for notice, newspaper notice, and method of
 6-18 giving a person notice do not apply to a hearing held on an
 6-19 application for an emergency authorization under this section, but
 6-20 such general notice of the hearing shall be given as the
 6-21 commission, under Subsections (c) and (e) of this section,
 6-22 considers practicable under the circumstances.

6-23 [(h) -- The commission may grant an emergency authorization
 6-24 under this section for the temporary transfer and use of all or
 6-25 part of a permit, certified filing, or certificate of adjudication
 6-26 for other than domestic or municipal use to a retail or wholesale
 6-27 water supplier for public health and safety purposes. -- In addition
 6-28 to the requirements contained in Subsection (b) of this section,
 6-29 the commission may direct that the applicant will timely pay the
 6-30 amounts for which the applicant may be potentially liable under
 6-31 Subsection (j) of this section and to the extent authorized by law
 6-32 will fully indemnify and hold harmless the state, the executive
 6-33 director, and the commission from any and all liability for the
 6-34 authorization sought. -- The commission may order bond or other
 6-35 surety in a form acceptable to the commission as a condition for
 6-36 such emergency authorization. -- The commission may not grant an
 6-37 emergency authorization under this section which would cause a
 6-38 violation of a federal regulation.

6-39 [(i) -- In transferring the amount of water requested by the
 6-40 applicant, the executive director or the commission shall allocate
 6-41 the requested amount among two or more permits, certified filings,
 6-42 or certificates of adjudication for other than domestic or
 6-43 municipal use.

6-44 [(j) -- The person granted an emergency authorization under
 6-45 Subsection (h) of this section is liable to the owner and the
 6-46 owner's agent or lessee from whom the use is transferred for the
 6-47 fair market value of the water transferred as well as for any
 6-48 damages caused by the transfer of use. -- If, within 60 days of the
 6-49 termination of the authorization, the parties do not agree on the
 6-50 amount due, or if full payment is not made, either party may file a
 6-51 complaint with the commission to determine the amount due. -- The
 6-52 commission may use dispute resolution procedures for a complaint
 6-53 filed under this subsection. -- After exhausting all administrative
 6-54 remedies under this subsection, an owner from whom the use is
 6-55 transferred may file suit to recover or determine the amount due in
 6-56 a district court in the county where the owner resides or has its
 6-57 headquarters. -- The prevailing party in a suit filed under this
 6-58 subsection is entitled to recover court costs and reasonable
 6-59 attorney's fees.

6-60 [(k) -- The commission may prescribe rules and adopt fees which
 6-61 are necessary to carry out the provisions of this section.

6-62 [(l) -- An emergency authorization does not vest in the grantee
 6-63 any right to the diversion, impoundment, or use of water and shall
 6-64 expire and be cancelled in accordance with its terms.]

6-65 SECTION 18. Subsection (a), Section 11.142, Water Code, is
 6-66 amended to read as follows:

6-67 (a) Without obtaining a permit, a person may construct on
 6-68 his own property a dam or reservoir with normal storage of not more
 6-69 than 200 acre-feet of water for domestic and livestock purposes.

Normal storage may involve the temporary storage of greater than 200 acre-feet if the owner of the structure maintains records which can demonstrate that throughout a 12-month period an average of not more than 200 acre-feet of water is impounded in such a structure.

SECTION 19. Subsection (b), Section 11.173, Water Code, is amended to read as follows:

(b) A permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) of this section:

(1) to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985) or a similar governmental program; [or]

(2) if any portion of the water authorized to be used pursuant to a permit, certified filing, or certificate of adjudication has been used in accordance with a regional water plan approved pursuant to Section 16.053 of this code;

(3) if the permit, certified filing, or certificate of adjudication was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder and consistent with projections of future water needs contained in the state water plan; or

(4) if the permit, certified filing, or certificate of adjudication was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term water planning.

SECTION 20. Subsection (b), Section 11.177, Water Code, is amended to read as follows:

(b) In determining what constitutes reasonable diligence or a justified nonuse as used in Subsection (a)(2) of this section, the commission shall give consideration to:

(1) whether sufficient water is available in the source of supply to meet all or part of the appropriation during the 10-year period of nonuse;

(2) whether the nonuse is justified by the holder's participation in the federal Conservation Reserve Program or a similar governmental program as provided by Section 11.173(b)(1) of this code;

(3) [whether--the---permit,---certified---filing,---or certificate--of--adjudication--was--obtained--to--meet--demonstrated long-term-public-water--supply--or--electric--generation--needs--as evidenced--by--a--water-management-plan-developed-by-the-holder-and consistent-with-projections-of-future-water-needs-contained-in--the state-water-plan];

[+4]--whether---the---permit,---certified---filing,--or certificate-of-adjudication-was--obtained--as--the--result--of--the construction--of--a--reservoir--funded, in whole or in part, by the holder--of--the--permit,--certified--filing,--or---certificate---of adjudication-as-part-of-the-holder's-long-term-water-planning;

[+5] whether the existing or proposed authorized purpose and place of use are consistent with an approved regional water plan as provided by Section 16.053 of this code;

(4) [+6] whether the permit, certified filing, or certificate of adjudication has been deposited into the Texas Water Bank as provided by Sections 15.7031 and 15.704 of this code or whether it can be shown that the water right or water available under the right is currently being made available for purchase through private marketing efforts; or

(5) [+7] whether the permit, certified filing, or certificate of adjudication has been reserved to provide for instream flows or bay and estuary inflows.

SECTION 21. Subsections (c), (d), (e), and (f), Section 12.052, Water Code, are amended to read as follows:

(c) The [if--the] owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this

section may not wilfully fail [~~fails~~] or refuse [~~refuses~~] to comply within the 30-day period following the date of the commission's final, nonappealable order to do so and may not [~~or--if--a--person~~] wilfully fail [~~fails~~] to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order [~~7--he--is--liable--to--a penalty--of--not--more--than--\$5,000--a--day--for--each--day--he--continues--to violate--this--section--The--state--may--recover--the--penalty--by--suit brought--for--that--purpose--in--the--district--court--of--Travis--County~~].

(d) The commission may issue an emergency works safety order under Section 5.519. [~~If--the--commission--determines--that--the existing--condition--of--the--dam--is--creating--or--will--cause--extensive or--severe--property--damage--or--economic--loss--to--others--or--is--posing an--immediate--and--serious--threat--to--human--life--or--health--and--that other--procedures--available--to--the--commission--to--remedy--or--prevent the--occurrence--of--the--situation--will--result--in--unreasonable--delay, the--commission--may--issue--an--emergency--order,--either--mandatory--or prohibitory--in--nature,--directing--the--owner--of--a--dam--to--repair, modify,--maintain,--dewater,--or--remove--the--dam--which--the--commission determines--is--unsafe--The--emergency--order--may--be--issued--without notice--to--the--dam--owner--or--with--notice--the--commission--considers practicable--under--the--circumstances--The--notice--does--not--have--to comply--with--Chapter--20017--Government--Code-~~]

(e) [~~If--the--commission--issues--an--emergency--order--under authority--of--this--section--without--notice--to--the--dam--owner,--the commission--shall--fix--a--time--and--place--for--a--hearing--which--shall--be held--as--soon--as--practicable--to--affirm,--modify,--or--set--aside--the emergency--order,--The--notice--does--not--have--to--comply--with--Chapter 20017--Government--Code--If--the--nature--of--the--commission's--action requires--further--proceedings,--those--proceedings--shall--be--conducted as--appropriate--under--the--Administrative--Procedure--and--Texas Register--Act,--as--amended--(Article--6252--13a,--Vernon's--Texas--Civil Statutes)-~~]

[~~f~~] Nothing in this section or in rules or orders made by the commission shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

SECTION 22. Chapter 7, Water Code, is amended by adding Subchapter I, and Sections 13.412, 13.4131, and 13.4132, Water Code, are transferred to Subchapter I, Chapter 7, Water Code, redesignated as Sections 7.402, 7.403, and 7.404, and amended to read as follows:

SUBCHAPTER I. RECEIVERSHIP; SUPERVISION OF CERTAIN UTILITIES

Sec. 7.401. DEFINITIONS. In this subchapter, "affiliated interest" and "affiliate" have the meanings assigned by Section 13.002.

Sec. 7.402 [~~13-412~~]. RECEIVERSHIP. (a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs the commission that the owner is abandoning the system;
- (3) violates a final order of the commission; or
- (4) allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if an appointment is necessary:

- (1) to guarantee the collection of assessments, fees, penalties, or interest;
- (2) to guarantee continuous and adequate service to the customers of the utility; or
- (3) to prevent continued or repeated violation of the final order.

(c) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(d) After appointment and execution of bond, the receiver shall take possession of the assets of the utility specified by the

court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

(e) On a showing of good cause by the utility, the court may dissolve the receivership and order the assets and control of the business returned to the utility.

(f) For purposes of this section and Section 7.404 [~~13-4132~~], abandonment may include but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek commission approval to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H, Chapter 13.

Sec. 7.403 [~~13-4131~~]. SUPERVISION OF CERTAIN UTILITIES. (a) The commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with Chapter 13 [~~this chapter~~] or commission rules, or noncompliance with commission orders.

(b) While supervising a utility, the commission may require the utility to:

(1) meet [~~abide---by~~] conditions and requirements prescribed by the commission, including:

(A) [~~1~~] management requirements;
(B) [~~2~~] additional reporting requirements;
(C) [~~3~~] restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and

(D) [~~4~~] a requirement that the utility place the utility's funds into an account in a financial institution approved by the commission and use of those funds shall be restricted to reasonable and necessary utility expenses; and

(2) [~~the commission may require that the utility~~] obtain commission approval before taking an [any] action [~~that may be~~] restricted under Subdivision (1) [~~Subsection (b)~~] of this section.

(c) An [Any] action or transaction for which commission approval is required by this section that [which] occurs without commission approval may be voided by the commission.

Sec. 7.404 [~~13-4132~~]. OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. (a) The commission, after providing to the utility notice and an opportunity to be heard by the commissioners at a commission meeting, may authorize a willing person to temporarily manage and operate a utility if the utility:

(1) has discontinued or abandoned operations or the provision of services; or

(2) has been or is being referred to the attorney

10-1 general for the appointment of a receiver under Section 7.402
10-2 [13-412].

10-3 (b) The commission may appoint a person under this section
10-4 by emergency order under Section 5.507 and may authorize an
10-5 emergency rate increase by emergency order under Section 5.508[
10-6 and--notice--of--the--action-is--adequate-if-the-notice-is-mailed-or
10-7 hand-delivered--to--the--last--known--address--of--the--utility's
10-8 headquarters].

10-9 (c) A person appointed under this section has the powers and
10-10 duties necessary to ensure the continued operation of the utility
10-11 and the provision of continuous and adequate services to customers,
10-12 including the power and duty to:

- 10-13 (1) read meters;
- 10-14 (2) bill for utility services;
- 10-15 (3) collect revenues;
- 10-16 (4) disburse funds;
- 10-17 (5) access all system components; and
- 10-18 (6) request rate increases.

10-19 (d) This section does not affect the authority of the
10-20 commission to pursue an enforcement claim against a utility or an
10-21 affiliated interest.

10-22 SECTION 23. Section 13.414, Water Code, is amended to read
10-23 as follows:

10-24 Sec. 13.414. VIOLATION BY [PENALTY--AGAINST] RETAIL PUBLIC
10-25 UTILITY OR AFFILIATED INTEREST. A [a]--Any] retail public utility
10-26 or affiliated interest may not violate [that--violates] this
10-27 chapter, fail [fails] to perform a duty imposed on it, or fail,
10-28 neglect, [fails,--neglects,] or refuse [refuses] to obey an order,
10-29 rule, direction, or requirement of the commission or decree or
10-30 judgment of a court [is-subject-to-a-civil-penalty-of-not-less-than
10-31 \$100--nor-more-than-\$5,000--for-each-violation].

10-32 [b]--A--retail-public-utility-or-affiliated-interest-commits
10-33 a-separate-violation-each-day-it-continues--to--violate--Subsection
10-34 [a]--of-this-section--

10-35 [c]--The--attorney--general--shall--institute--suit--on--his--own
10-36 initiative--or--at--the--request--of,--in--the--name--of,--and--on--behalf--of
10-37 the--commission--in--a--court--of--competent--jurisdiction--to--recover--the
10-38 penalty--under--this--section--]

10-39 SECTION 24. Subsections (b), (c), and (d), Section 35.008,
10-40 Water Code, are amended to read as follows:

10-41 (b) The commission shall call a public comment [an
10-42 evidentiary] hearing to consider:

10-43 (1) the designation of a priority groundwater
10-44 management area;

10-45 (2) whether a district should be created over all or
10-46 part of a priority groundwater management area; or

10-47 (3) whether all or part of the land in the priority
10-48 groundwater management area should be added to an existing
10-49 district.

10-50 (c) Public comment [Evidentiary] hearings shall be held at
10-51 a location in one of the counties in which the priority groundwater
10-52 management area is located, or proposed to be located, or in the
10-53 nearest convenient location if adequate facilities are not
10-54 available in those counties.

10-55 (d) At the public comment hearing, the commission shall hear
10-56 testimony and receive evidence from affected persons. The
10-57 commission shall consider the executive director's report and
10-58 supporting information and the testimony and evidence received at
10-59 the public comment hearing. If the commission considers further
10-60 information necessary, the commission may request such information
10-61 from any source.

10-62 SECTION 25. Section 35.009, Water Code, is amended to read
10-63 as follows:

10-64 Sec. 35.009. NOTICE AND PUBLIC COMMENT HEARING. (a) The
10-65 commission shall have notice of the public comment hearing
10-66 published in at least one newspaper with general circulation in the
10-67 county or counties in which the area proposed for designation as a
10-68 priority groundwater management area or the area within a priority
10-69 groundwater management area being considered for district creation

11-1 or for addition to an existing district is located. Notice must be
 11-2 published not later than the 30th day before the date set for the
 11-3 commission to consider the designation of the priority groundwater
 11-4 management area, the creation of a district in a priority
 11-5 groundwater management area, or the addition of land in a priority
 11-6 groundwater management area to an existing district.

11-7 (b) The notice must include:

11-8 (1) if applicable, a statement of the general purpose
 11-9 and effect of designating the proposed priority groundwater
 11-10 management area;

11-11 (2) if applicable, a statement of the general purpose
 11-12 and effect of creating a district in the priority groundwater
 11-13 management area;

11-14 (3) if applicable, a statement of the general purpose
 11-15 and effect of adding all or part of the land in the priority
 11-16 groundwater management area to an existing district;

11-17 (4) a map generally outlining the boundaries of the
 11-18 area being considered for priority groundwater management area
 11-19 designation or the priority groundwater management area being
 11-20 considered for district creation or for addition to an existing
 11-21 district, or notice of the location at which a copy of the map may
 11-22 be examined or obtained;

11-23 (5) a statement that the executive director's report
 11-24 concerning the priority groundwater management area or proposed
 11-25 area is available at the commission's main office in Austin, Texas,
 11-26 and at regional offices of the commission for regions which include
 11-27 territory within the priority groundwater management area or
 11-28 proposed priority groundwater management area and that the report
 11-29 is available for inspection during regular business hours;

11-30 (6) a description or the name of the locations in the
 11-31 affected area at which the commission has provided copies of the
 11-32 executive director's report to be made available for public
 11-33 inspection;

11-34 (7) the name and address of each public library, each
 11-35 county clerk's office, and each district to which the commission
 11-36 has provided copies of the executive director's report; and

11-37 (8) the date, time, and place of the public comment
 11-38 hearing.

11-39 (c) The commission shall also give written notice of the
 11-40 date, time, place, and purpose of the public comment hearing to the
 11-41 governing body of each county, regional water planning group,
 11-42 adjacent groundwater district, municipality, river authority, water
 11-43 district, or other entity which supplies public drinking water,
 11-44 including each holder of a certificate of convenience and necessity
 11-45 issued by the commission, and of each irrigation district, located
 11-46 either in whole or in part in the priority groundwater management
 11-47 area or proposed priority groundwater management area. The notice
 11-48 must be given before the 30th day preceding the date set for the
 11-49 public comment hearing.

11-50 SECTION 26. Subsection (a), Section 35.012, Water Code, is
 11-51 amended to read as follows:

11-52 (a) At the conclusion of its public comment hearing and
 11-53 considerations, the commission shall issue an order stating its
 11-54 findings and conclusions.

11-55 SECTION 27. Chapter 35, Water Code, is amended by adding
 11-56 Section 35.010 to read as follows:

11-57 Sec. 35.010. CREATION OF DISTRICTS ON PETITION AFTER
 11-58 DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA. The
 11-59 commission may not consider the creation of a groundwater
 11-60 conservation district in a designated priority groundwater
 11-61 management area before the conclusion of the next regular session
 11-62 of the Texas Legislature following the designation unless the local
 11-63 landowners have initiated a petition process under Chapter 36 for
 11-64 the creation of a groundwater conservation district with a priority
 11-65 groundwater management area.

11-66 SECTION 28. Section 35.012, Water Code, is amended by adding
 11-67 new Subsections (c) and (d), relettering existing Subsections (c),
 11-68 (d), (e), and (f) as Subsections (e), (f), (g), and (h), and
 11-69 amending existing Subsection (d) to read as follows:

(c) Not later than the 10th day after the date on which the commission order designating a priority groundwater management area is issued, the commission shall send written notice of the commission's actions to each landowner in the designated priority groundwater management area at the landowner's most recent known address as shown in the tax rolls of the county in which the land is located. The notice must include the commission's findings and conclusions from the data and information considered in designating the priority groundwater management area and the commission's recommendation regarding the need for a groundwater conservation district in the priority groundwater management area.

(d) As soon as possible after a commission order designating a priority groundwater management area, the Texas Agricultural Extension Service shall begin an educational program within the area with the assistance and cooperation of the Texas Water Development Board, the commission, the Department of Agriculture, other state agencies, and existing districts to inform the residents of the status of the area's water resources and management options including possible formation of a district.

(e) Following the issuance of a commission order under Subsection (b), the landowners in the priority groundwater management area may:

(1) create one or more districts under Subchapter B, Chapter 36;

(2) have the area annexed to a district that adjoins the area; or

(3) create one or more districts through the legislative process.

(f) ~~[(d)]~~ The commission shall identify the areas subject to the order of the commission issued under Subsection (b) that have not been incorporated into a district and shall delineate proposed boundaries of a district to include those areas. [If--the commission--proposes--the--creation--of--one--or--more--districts,--the Texas--Agricultural--Extension--Service--shall--begin--an--educational program--within--such--areas--with--the--assistance--and--cooperation--of the--Texas--Water--Development--Board,--the--commission,--other--state agencies,--and--existing--districts--to--inform--the--residents--of--the status--of--the--area's--water--resources--and--management--options including--possible--formation--of--a--district,--before--beginning--the procedures--for--creation--of--a--district--provided--in--Subchapter--B, Chapter--36.]

(g) ~~[(e)]~~ If the commission fails to find that the district would be a benefit to the land and other property within the priority groundwater management area, that there is a public need for the district, or that creation of the district will further the public welfare, the commission shall issue an order stating that a district should not be created within the boundaries of the priority groundwater management area.

(h) ~~[(f)]~~ An order of the commission issued under this section may not be appealed.

SECTION 29. Section 36.014, Water Code, is amended to read as follows:

Sec. 36.014. NOTICE AND HEARING ON DISTRICT CREATION. ~~[(a)]~~ If a petition is filed under Section 36.013 or the commission proposes that a district be created under Section 35.012(b), the commission shall give notice of the [an] application or proposal as required by Section 49.011(a) and may conduct a hearing on the application or proposal if the commission determines that a hearing is necessary under Section 49.011.

~~[(b)--If--the--petition--contains--a--request--to--create--a management-area-in-all-or-part-of-the-proposed-district,--the--notice must--also--be--given--in--accordance--with--the--requirements--in--Section 35.006--for--the--designation--of--management--areas.]~~

SECTION 30. Section 36.015, Water Code, is amended to read as follows:

Sec. 36.015. FINDINGS. (a) If the commission finds that a district requested by petition or proposed by the commission is feasible and practicable, [that--it] would be a benefit to the land in the district, and [that--it] would be a public benefit or

utility, the commission shall issue an order containing these findings granting the petition or adopting the proposal, as appropriate.

(b) If the commission finds that a district is not feasible and practicable, that it would not be a benefit to the land in the district, that it would not be a public benefit or utility, or that it is not needed, the commission by order shall deny the petition or reject the proposal, as appropriate.

(c) The commission may adjust the boundaries of the proposed district to exclude any land that would not be benefited by inclusion in the district and is not necessary to the district for proper regulation of the groundwater reservoir.

(d) If the commission grants the petition or adopts the proposal to create the district, it shall direct in its order creating the district that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors.

(e) ~~[The refusal to grant a petition to create a district does not invalidate or affect the designation of any management area requested in the same petition.]~~

~~[f]~~ The commission shall act on the petition or its proposal within a reasonable amount of time.

SECTION 31. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1074 to read as follows:

Sec. 36.1074. EXTENSION OF DISTRICT AUTHORITY TO ADDITIONAL AQUIFERS WITHIN DISTRICT'S GEOGRAPHIC BOUNDARIES. (a) The commission by rule shall establish a procedure by which a district created by special law may petition to extend the district's authority to include management of any aquifer within the geographic boundaries of the district the management of which is not provided for by the special law creating any district.

(b) Rules adopted by the commission under this section shall establish grounds for a petition described by Subsection (a), including:

- (1) a change in pumping conditions;
- (2) a change in water quality conditions;
- (3) a finding that another aquifer is affecting water levels in the primary managed aquifer; and
- (4) other grounds the commission may specify.

(c) A petition under this section may be granted only by order of the commission.

SECTION 32. Section 36.0151, Water Code, is amended to read as follows:

Sec. 36.0151. NOTICE OF CREATION BY COMMISSION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA. ~~[(a) If the commission proposes that a district be created under Section 35.012(d), it shall in its order creating the district provide that temporary directors be appointed under Section 36.016 and that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors.]~~

~~[(b)]~~ The commission shall notify the county commissioners court of each county with territory in the district of the district's creation as soon as practicable after issuing the order under Section 36.015(a) creating a [the] district proposed by the commission under Section 35.012(b).

SECTION 33. Section 36.108, Water Code, is amended to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA OR PRIORITY GROUNDWATER MANAGEMENT AREA. (a) If two or more districts are located within the boundaries of the same management area or priority groundwater management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. On completion of the plan, each district shall forward a copy of the new revised management plan to the other districts in the management area or priority groundwater management area.

(b) The board of directors of each district in the management area or priority groundwater management area may, by resolution, call a joint meeting with the boards of directors of

14-1 the other districts in the management area or priority groundwater
 14-2 management area to review the management plans and accomplishments
 14-3 for the management area or priority groundwater management area.
 14-4 The boards shall meet to consider the plans individually and shall
 14-5 compare them to other management plans then in force in the
 14-6 management area. In reviewing the management plans, the boards
 14-7 shall consider:

14-8 (1) the goals of each management plan and its impact
 14-9 on planning throughout the management area or priority groundwater
 14-10 management area;

14-11 (2) the effectiveness of the measures established by
 14-12 each management plan for conserving and protecting groundwater and
 14-13 preventing waste, and the effectiveness of these measures in the
 14-14 management area or priority groundwater management area generally;
 14-15 and

14-16 (3) any other matters that the boards consider
 14-17 relevant to the protection and conservation of groundwater and the
 14-18 prevention of waste in the management area or priority groundwater
 14-19 management area.

14-20 (c) A joint meeting of the boards of directors must be held
 14-21 in accordance with the Open Meetings Act, Chapter 551, Government
 14-22 Code. Notice of the meeting shall be given in accordance with the
 14-23 requirements for notice of district board of directors meetings
 14-24 under that Act. In addition, notice of the meeting shall be
 14-25 published not later than the 30th day before the date of the
 14-26 scheduled meeting in a newspaper with general circulation in each
 14-27 county in the management area or priority groundwater management
 14-28 area.

14-29 (d) A district in the management area or priority
 14-30 groundwater management area may file a petition with the commission
 14-31 requesting an inquiry if the petitioner district believes that:

14-32 (1) another district in the management area or
 14-33 priority groundwater management area has failed to adopt rules;

14-34 (2) the groundwater in the management area or priority
 14-35 groundwater management area is not adequately protected by the
 14-36 rules adopted by another district; or

14-37 (3) the groundwater in the management area or priority
 14-38 groundwater management area is not adequately protected due to the
 14-39 failure of another district to enforce substantial compliance with
 14-40 its rules.

14-41 (e) Not later than the 90th day after the date the petition
 14-42 is filed, the commission shall review the petition and either:

14-43 (1) dismiss it if it finds that the evidence is not
 14-44 adequate to show that any of the conditions alleged in the petition
 14-45 exist; or

14-46 (2) select a review panel as provided in Subsection
 14-47 (f).

14-48 (f) The commission may appoint a review panel consisting of
 14-49 a chairman and four other members. A director or general manager
 14-50 of a district located outside the management area or priority
 14-51 groundwater management area that is the subject of the petition may
 14-52 be appointed to the review panel. The commission may not appoint
 14-53 more than two members of the review panel from any one district.
 14-54 The commission also shall appoint a disinterested person to serve
 14-55 as a nonvoting recording secretary for the review panel. The
 14-56 recording secretary may be an employee of the commission. The
 14-57 recording secretary shall record and document the proceedings of
 14-58 the panel.

14-59 (g) Not later than the 120th day after appointment, the
 14-60 review panel shall review the petition and any evidence relevant to
 14-61 the petition and, in a public meeting, prepare a report to the
 14-62 commission. The commission may direct the review panel to conduct
 14-63 public hearings at a location in the management area or priority
 14-64 groundwater management area to take evidence on the petition. The
 14-65 review panel may attempt to negotiate a settlement or resolve the
 14-66 dispute by any lawful means.

14-67 (h) In its report, the review panel shall include:

14-68 (1) a summary of all evidence taken in any hearing on
 14-69 the petition;

(2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and

(3) any other information the panel considers appropriate.

SECTION 34. Section 341.047, Health and Safety Code, is transferred to Subchapter E, Chapter 7, Water Code, redesignated as Section 7.1605, Water Code, and amended to read as follows:

Sec. 7.1605 [341-047]. VIOLATIONS RELATING TO PUBLIC DRINKING WATER [CRIMINAL--PENALTY]. (a) A person commits an offense if the person:

(1) violates a provision of Section 341.031, Health and Safety Code;

(2) violates a provision of Section 341.032(a) or (b), Health and Safety Code;

(3) violates a provision of Section 341.033(a)-(f), Health and Safety Code;

(4) constructs a drinking water supply system without submitting completed plans and specifications as required by Section 341.035(c), Health and Safety Code;

(5) begins construction of a drinking water supply system without the commission's approval as required by Section 341.035(a), Health and Safety Code;

(6) violates a provision of Section 341.0351 or 341.0352, Health and Safety Code;

(7) fails to remove a sign as required by Section 341.0354, Health and Safety Code; or

(8) violates a provision of Section 341.036, Health and Safety Code.

(b) An offense under Subsection (a) is a Class C misdemeanor.

(c) If it is shown on a trial of the defendant that the defendant has been convicted of an offense under Subsection (a) within a year before the date on which the offense being tried occurred, the subsequent offense under Subsection (a) is a Class B misdemeanor.

(d) Each day of a continuing violation is a separate offense.

SECTION 35. Section 341.048, Health and Safety Code, is amended to read as follows:

Sec. 341.048. VIOLATION [CIVIL--ENFORCEMENT]. [(a)] A person may not cause, suffer, allow, or permit a violation of this subchapter or a rule or order adopted under this subchapter.

[(b)--A--person--who--causes,--suffers,--allows,--or--permits--a--violation--under--this--subchapter--shall--be--assessed--a--civil--penalty--of--not--less--than--\$50--nor--more--than--\$1,000--for--each--violation.--Each--day--of--a--continuing--violation--is--a--separate--violation.]

[(c)--If--it--appears--that--a--person--has--violated,--is--violating,--or--threatens--to--violate--a--provision--under--this--subchapter,--the--commission,--a--county,--or--a--municipality--may--institute--a--civil--suit--in--a--district--court--for:]

[(1)--injunctive--relief--to--restrain--the--person--from--continuing--the--violation--or--threat--of--violation,]

[(2)--the--assessment--and--recovery--of--a--civil--penalty,]

or

[(3)--both--injunctive--relief--and--a--civil--penalty.]

[(d)--The--commission--is--a--necessary--and--indispensable--party--in--a--suit--brought--by--a--county--or--municipality--under--this--section.]

[(e)--On--the--commission's--request,--the--attorney--general--shall--institute--a--suit--in--the--name--of--the--state--for--injunctive--relief,--to--recover--a--civil--penalty,--or--for--both--injunctive--relief--and--civil--penalty.]

[(f)--The--suit--may--be--brought--in:]

[(1)--Travis--County,]

[(2)--the--county--in--which--the--defendant--resides,--or]

[(3)--the--county--in--which--the--violation--or--threat--of--violation--occurs.]

[(g)--In--a--suit--under--this--section--to--enjoin--a--violation--or--threat--of--violation--of--this--subchapter,--the--court--shall--grant--the--

state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

[h] Civil penalties recovered in a suit brought under this section by a county or municipality shall be equally divided between:

[1] the state, and

[2] the county or municipality that first brought the

suit.]

SECTION 36. Section 5.507, Water Code, is amended to read as follows:

Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. The commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 7.404 [13.4132]. Notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 37. Subsection (a), Section 5.508, Water Code, is amended to read as follows:

(a) Notwithstanding the requirements of Section 13.187, the commission may authorize an emergency rate increase for a utility for which a person has been appointed under Section 5.507 or 7.404 [13.412] or for which a receiver has been appointed under Section 7.402 [13.4132] if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

SECTION 38. Subsection (c), Section 341.0485, Health and Safety Code, is amended to read as follows:

(c) The comptroller shall manage the account for the benefit of the commission and shall invest the money and deposit interest and other investment proceeds in the account. The comptroller shall release money from the account in the manner provided by the commission. Money in the account may be used only for:

(1) capital improvements to the water or sewer system of a utility that has paid fines or penalties under this chapter or under Chapter 13, Water Code, that have been deposited in the account; or

(2) capital improvements and operating and maintenance expenses for a utility placed in receivership or under a temporary manager under Section 7.404 [13.4132], Water Code.

SECTION 39. (a) The following sections of the Water Code are repealed:

- (1) Section 11.082;
- (2) Sections 11.0841 and 11.0842;
- (3) Section 11.148;
- (4) Section 13.411;
- (5) Section 13.4133;
- (6) Sections 13.4151 and 13.416;
- (7) Sections 13.417 and 13.418; and
- (8) Sections 35.004, 35.005, and 35.006.

(b) Sections 341.049 and 341.050, Health and Safety Code, are repealed.

SECTION 40. This Act takes effect September 1, 1999.

SECTION 41. (a) The changes in law made by this Act apply only to an offense committed or a violation or threat of violation that occurs on or after September 1, 1999. For purposes of this section an offense is committed and a violation or threat of violation occurs before September 1, 1999, if any element of the offense, violation, or threat of violation occurs before that date.

(b) An offense committed or a violation or threat of violation that occurred before September 1, 1999, is covered by the law in effect when the offense was committed or the violation or threat of violation occurred, and the former law is continued in effect for that purpose.

SECTION 42. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

17-1 constitutional rule requiring bills to be read on three several
17-2 days in each house be suspended, and this rule is hereby suspended.
17-3 * * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

(SB) SCR SJR SR HB HCR HJR 1311
By Brown
(Author/Senate Sponsor)
4-6-99
(date)

We, your Committee on NATURAL RESOURCES, to which was referred the attached measure,
have on 3-30-99, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed
☐ the caption remained the same as original measure
☐ the caption changed with adoption of the substitute

☐ do pass as substituted, and be ordered not printed

☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☒ yes ☐ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Brown, Chairman	<input checked="" type="checkbox"/>			
Senator Armbrister, Vice-Chairman	<input checked="" type="checkbox"/>			
Senator Barrientos	<input checked="" type="checkbox"/>			
Senator Bivins	<input checked="" type="checkbox"/>			
Senator Haywood	<input checked="" type="checkbox"/>			
Senator Lucio	<input checked="" type="checkbox"/>			
Senator Ratliff			<input checked="" type="checkbox"/>	
TOTAL VOTES	<u>6</u>		<u>1</u>	

COMMITTEE ACTION

S260 Considered in public hearing
S270 Testimony taken

Carol N'Gual
COMMITTEE CLERK

Brown
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

WITNESS LIST

SB 1311
SENATE COMMITTEE REPORT
Natural Resources Committee

March 30, 1999 - 2:00P

On: Bowers, Richard (North Plains Groundwater District), Dumas
Petersen, Ken (TNRCC - Office of Water), Austin

Registering, but not testifying:
For: Powers, Bill (Texas Farm Bureau), Austin

On: Williams, C.E. (Panhandle Groundwater District - General
Manager), White Deer

BILL ANALYSIS

Senate Research Center
76R3732 MI-D

C.S.S.B. 1311
By: Brown
Natural Resources
4/1/1999
Committee Report (Substituted)

DIGEST

The 75th Texas Legislature established a comprehensive framework for planning the development and management of the state's water resources in Senate Bill 1. The consolidation of such authority relating to water rights and water utilities was intentionally avoided so as not to interfere with changes to those provisions in S.B. 1. The Interim Committee on Water Resource Development and Management, through its monitoring of the implementation of S.B. 1 also developed recommendations pertaining to the related activities of the Texas Natural Resource Conservation Commission (commission) under S.B.1, including the process for creating priority groundwater management areas and groundwater conservation districts. C.S.S.B. 1311 consolidates the emergency order and enforcement authorities of the commission related to water rights and water utilities.

PURPOSE

As proposed, C.S.S.B. 1311 regulates development and management of water resources.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTION 2 (Sections 5.517(d) and Section 5.518(d), Water Code), SECTION 17 (Section 11.138(a), Water Code), and SECTION 31 (Section 36.1074(a), Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.504(a), Water Code, to require an emergency order to set a time for the hearing not later than the 20th day after the date the emergency order is issued, if the emergency order is issued under Section 5.517 or 5.518.

SECTION 2. Amends Chapter 5L, Water Code, by adding Sections 5.517, 5.518, 5.519, and 5.520, as follows:

Sec. 5.517. EMERGENCY PERMIT TO DIVERT AND USE WATER; AMENDMENT TO WATER RIGHT. Authorizes the Texas Natural Resource Conservation Commission (commission) by emergency order to issue a permit to divert and use water or amend an existing permit, certified filing, or certificate of adjudication for an initial period not to exceed 120 days if the commission finds that certain actions have taken place, except as provided by Section 5.506 and after notification to the governor. Authorizes the executive director to issue an emergency order if an imminent threat to the public health, safety, and welfare or the environment exists that requires emergency action before the commission can take action under Subsection (a) and there is no feasible alternative. Requires the commission to hold hearing as provided for in Section 5.504 as soon as practicable but not later than 20, rather than 10, days after issuance of the order to affirm, modify, or set aside the order, the executive director issues an emergency order under this subsection. Provides that the notice requirements of Section 11.132 relating to the time for notice, newspaper notice and method of giving a person notice do not apply to a hearing held on an application for an emergency order under this section. Requires the commission to give the general notice of the hearing that the commission considers practicable under the circumstances. Authorizes the commission to adopt rules and impose fees necessary to carry out the provisions of this section. Provides that an emergency order under this section does not vest in the grantee of any right to the diversion, impoundment, or use of water and expires by its terms.

Sec. 5.518. EMERGENCY ORDER FOR TEMPORARY TRANSFER OF USE OF WATER

RIGHT. Authorizes the commission by emergency order to grant the temporary transfer and use of all or part of a surface water right for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety purposes. Authorizes the commission to direct the applicant to timely pay the amounts for which the applicant may be potentially liable under this section and to fully indemnify and hold harmless the state, executive director, and the commission from any and all liability for the order sought. Authorizes the commission to order bond or other surety in a form acceptable to the commission as a condition for an emergency order under this section. Prohibits the commission from granting an emergency authorization under this section that would cause a violation of a federal regulation. Requires the executive director or the commission to allocate the requested amount among two or more permits, certified filings, or certificates of adjudication for other than domestic or municipal use. Provides that a person granted an emergency authorization under this section is liable to the owner from whom use is transferred and for any damages proximately caused by the transfer of use. Authorizes either party to file a complaint with the commission to determine the amount due, if, within 60 days of the termination of the order, the parties do not agree on the amount due, or if full payment is not made. Requires the commission, by rule, to establish a dispute resolution procedure for a complaint filed under this section. Authorizes an owner from whom the use is transferred to file suit to recover or determine the amount due in a district court in the county where the owner resides or has its headquarters. Provides that the prevailing party in a suit filed under this subsection is entitled to recover court cost and reasonable attorney's fees.

Sec. 5.519. EMERGENCY WORKS SAFETY ORDER. Authorizes the commission to issue a mandatory or prohibitory emergency order directing the owner of a dam, levee, or other water-storage or flood control work to repair, modify, maintain, dewater, or remove a work if the commission finds certain conditions exist.

Sec. 5.520. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. Authorizes the commission to issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 7.403. Provides that notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 3. Amends Section 7.004, Water Code, to provide that nothing in this chapter affects the right of a private corporation, individual, or political subdivision that has a justiciable interest to pursue any available common law remedy to enforce a right, to abate a condition of pollution or other nuisance, to recover damages to enforce a right, or to prevent or seek redress or compensation for violation of a right or otherwise redress an injury.

SECTION 4. Amends Chapter 7B, Water Code, by adding Section 7.034, as follows:

Sec. 7.034. ATTORNEY'S FEES; COSTS. Authorizes a district court to award the cost of litigation, including reasonable attorney's fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of Chapter 11 or a rule adopted under Chapter 11.

SECTION 5. Amends Section 7.051(b), Water Code, to provide that except as provided by this subsection, this subchapter does not apply to violations of Chapter 12, 13, 16, or 36. Provides that this chapter does apply to Section 16.236. Deletes text regarding Chapter 11 and Chapter 341, Health and Safety Code. Makes a conforming change.

SECTION 6. Amends Section 7.052, Water Code, to set forth certain penalties for violations including prohibiting the amount of the penalty for a violation of a rule or order adopted or permit, certified filing, or certificate of adjudication issued under Chapter 11 from exceeding a certain amount. Makes conforming changes.

SECTION 7. Amend Section 7.054, Water Code, to require a report regarding a possible violation under Chapter 11 to state the facts on which the conclusion was based and recommend the amount of any penalty. Requires the executive director to base the recommended amount of the proposed penalty on the factors provided by Section 7.053 and to analyze each factor for the benefit of the commission.

SECTION 8. Amends Section 7.069, Water Code, to require a penalty collected under this subchapter to be deposited to the credit of the general revenue fund, except as provided by Subsection (b). Requires a penalty collected under this subchapter from a public utility to be paid to the commission and deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 9. Amends Section 7.102, Water Code, to prohibit the amount of a penalty for a violation of a rule under Section 12.052 from exceeding \$5000. Requires a person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 11, to be assessed for each violation a civil penalty not less than \$100 nor greater than \$5,000 for each day of each violation as the court or jury considers proper. Make conforming changes.

SECTION 10. Amends Sections 7.105(a) and (c), Water Code, to authorize the attorney general to initiate a suit for recovery of a penalty under this section for a violation under Section 13.414. Authorizes the suit to be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs, except as provided by this subsection. Authorizes a suit to recover a penalty for a violation of a rule or order issued by the commission under Section 12.052 to be brought in Travis County.

SECTION 11. Amends Chapter 7D, Water Code, by adding Section 7.1075, as follows:

Sec. 7.1075. DISPOSITION OF PENALTY COLLECTED FROM PUBLIC UTILITY. Requires a penalty collected under this subchapter from a public utility to be paid to the commission and deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 12. Amends Chapter 7D, Water Code, by adding Section 7.112, as follows:

Sec. 7.112. LIMITATION ON SUIT FOR VIOLATION OF SECTION 11.081. Requires an action to collect the penalty provided by Section 7.102 for a violation of Section 11.081 to be brought within two years from the date of the alleged violation.

SECTION 13. Amends Section 7.351, Water Code, to make a conforming change.

SECTION 14. Amends Section 11.0843, Water Code, to delete text requiring a penalty collected under this section to be deposited in the state treasury to the credit of the general revenue fund. Makes conforming changes,

SECTION 15. Amends Section 11.085, Water Code, by adding Subsection (w), to provide that the requirements of this section apply to the transfer of water from one river basin to another regardless of whether all or any part of the water right, permit, certified filing, or certificate of adjudication under which the water is authorized to be used is also transferred.

SECTION 16. Amends Section 11.138(a), Water Code, to authorize the commission, by rule, to authorize the beneficial use, without a permit, of not more than 25 acre-feet of water, for a term not to exceed one year, if the diversion of water will not affect existing water right holders and the user of the water registers the use with the commission in the manner required by the commission.

SECTION 17. Amends Section 11.139, Water Code, to authorize the commission to grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication under Subchapter L, Chapter 5. Deletes text regarding emergency authorizations.

SECTION 18. Amends Section 11.142(a), Water Code, to provide that normal storage may involve the temporary storage of greater than 200 acre-feet if the owner of the structure maintains records which can demonstrate that throughout a 12 month period an average of not more than 200 acre-feet of water is impounded in such a structure.

SECTION 19. Amends Section 11.173(b), Water Code, to provide that a permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) if it was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder and consistent with projections of future water needs contained in the state water plan or if it was obtained as

the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term planning.

SECTION 20. Amends Section 11.177(b), Water Code, to make conforming changes.

SECTION 21. Amends Sections 12.052(c), (d), (e) and (f), Water Code, to prohibit the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section from wilfully failing or refusing to comply within the 30-day period following the date of the commission's final, nonappealable order to do so and from wilfully failing to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order. Authorizes the commission to issue an emergency works safety order under Section 5.519. Deletes text regarding existing conditions of a dam. Makes conforming changes.

SECTION 22. Amends Chapter 7, Water Code, by adding Subchapter I, and Sections 13.412, 13.4131, and 13.4132, Water Code, transferred to Chapter 7I, Water Code, redesignated as Section 7.401, 7.402, 7.403, and 7.404 as follows:

SUBCHAPTER I. RECEIVERSHIP; SUPERVISION OF CERTAIN UTILITIES

Sec. 7.401. DEFINITIONS. Defines "affiliated interests" and "affiliate."

Sec. 7.402. RECEIVERSHIP. Makes a conforming change.

Sec. 7.403. SUPERVISION OF CERTAIN UTILITIES. Authorizes the commission to require the utility to meet, rather than abide by, conditions and requirements prescribed by the commission and to obtain commission approval before taking an action under Subdivision (1), rather than Subsection (b), of this section. Authorizes an action or transaction for which commission approval is required by this section that occurs without commission approval to be void by the commission. Deletes text regarding the commission's supervision of a utility. Makes conforming and nonsubstantive changes.

Sec. 7.404. OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. Authorizes the commission to appoint a person under this section by emergency order under Section 5.507 and to authorize an emergency rate increase by emergency order under Section 5.508, rather than notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 23. Amends Section 13.414, Water Code, as follows:

Sec. 13.414. New heading: VIOLATION BY RETAIL PUBLIC UTILITY OR AFFILIATE INTEREST. Prohibits a retail public utility or affiliated interest from violating this chapter, failing to perform a duty imposed on it, or failing, neglect, or refusing to obey an order, rule, direction, or requirement of the commission or decree or judgment of a court. Deletes text regarding civil penalty. Makes conforming changes.

SECTION 24. Amends Sections 35.008(b), (c), and (d), Water Code, to require the commission to call a public comment, rather than evidentiary hearing, to consider certain actions. Provides that any testimony, evidence, report, comment, or other information received by the commission at a public comment hearing becomes part of the record of the contested case hearing on designation of the priority groundwater management area, creation of a district over all or part of the priority groundwater management area, or addition of any part of the land in the priority groundwater management area to an existing district.

SECTION 25. Amends Section 35.009, Water Code, as follows:

Sec. 35.009. New heading: NOTICE AND PUBLIC COMMENT HEARING. Makes conforming changes.

SECTION 26. Amends Section 35.012(a), Water Code, to make a conforming change.

SECTION 27. Amends Chapter 35, Water Code, by adding Section 35.010, as follows:

Sec. 35.010. CREATION OF DISTRICTS ON PETITION AFTER DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA. Prohibits the commission from considering the creation of a groundwater conservation district in a designated priority groundwater management area before the conclusion of the next regular session of the Texas Legislature following the designation unless the local landowners have initiated a petition process under Chapter 36 for the creation of a groundwater conservation district with a priority groundwater management area.

SECTION 28. Amends Section 35.012, Water Code, by adding new Subsections (c) and (d), relettering existing Subsections (c)-(f) as Subsections (e)-(h), and amending existing Subsection (d), to require the commission not later than a certain date on which the commission order designating a priority groundwater management area is issued, to send a written notice of the commission's actions to each landowner in the designation priority groundwater management area at the landowner's most recent known address as shown in the tax rolls of the county in which the land is located. Requires the notice to include the commission's findings and conclusions from the data and information considered in designating the priority groundwater management area and the commission's recommendation regarding the need for a groundwater conservation district in the priority groundwater management area. Requires the Texas Agricultural Extension Service to begin an educational program within the area with the assistance and cooperation of the Texas Water Development Board, the commission, other state agencies, and existing districts to inform the residents of the status of the area's water resources and management options including possible formation of a district. Makes conforming changes.

SECTION 29. Amends Section 36.014, Water Code, to require the commission to give notice of the application or proposal as required by Section 49.011(a) and may conduct a hearing on the application or proposal if the commission determines that a hearing is necessary under Section 49.011. Deletes text regarding management areas.

SECTION 30. Amends Section 36.015, Water Code, to require the commission to issue an order containing findings granting the petition or adopting the proposal, as appropriate, if the commission finds that a district requested by petition or proposed by the commission is feasible and practicable, a benefit to the land in the district, and would be a public benefit or utility. Requires the commission by order to deny the petition or reject the proposal, as appropriate. Requires the commission to direct in its orders creating the district that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors, if the commission grants the petition or adopts the proposal. Requires the commission to act on the petition or its proposal within a reasonable amount of time. Deletes text regarding the refusal to grant a petition.

SECTION 31. Amends Chapter 36D, Water Code, by adding Section 36.1074, as follows:

Sec. 36.1074. EXTENSION OF DISTRICT AUTHORITY TO ADDITIONAL AQUIFERS WITHIN DISTRICT'S GEOGRAPHIC BOUNDARIES. Requires the commission, by rule, to establish a procedure by which a district created by special law may petition to extend the district's authority to include management of any aquifer within the geographic boundaries of the district the management of which is not provided for by the special law creating any district. Requires the rules adopted by the commission under this section to establish grounds for a petition described by Subsection (a) including certain conditions. Authorizes a petition under this section to be granted only by order of the commission.

SECTION 32. Amends Section 36.0151, Water Code, as follows:

Sec. 36.0151. New heading: NOTICE OF CREATION BY COMMISSION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA. Requires the commission to notify the county commissioners court of each county with territory in the district of the district's creation as soon as practicable after issuing the order under Section 36.015(a) creating a district proposed by the commission under Section 35.012(b).

SECTION 33. Amends Section 36.108, Water Code, as follows:

Sec. 36.108. New heading: JOINT PLANNING IN MANAGEMENT AREA OR PRIORITY GROUNDWATER MANAGEMENT AREA. Requires each district to prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory, if two

or more districts are located within the boundaries of the same management area or priority groundwater management area. Making conforming changes.

SECTION 34. Amends Section 341.047, Health and Safety Code, by transferring it to Chapter 7E, Water Code, redesignating it as Section 7.1605, Water Code, as follows:

Sec. 7.1605. New heading: VIOLATIONS RELATING TO PUBLIC DRINKING WATER.
Makes conforming changes.

SECTION 35. Amends Section 341.048, Health and Safety Code, as follows:

Sec. 341.048. New heading: VIOLATION. Deletes text regarding certain violations.

SECTION 36. Amends Section 5.07, Water Code, to make a conforming change.

SECTION 37. Amends Section 5.08(a), Water Code, to make a conforming change.

SECTION 38. Amends Section 341.0485, Water Code, to make conforming change

SECTION 39. Repealer: (1) Section 11.082, Water Code (Unlawful Use: Civil Penalty).

(2) Section 11.0841, Water Code (Civil Remedy) and Section 11.0842, Water Code (Administrative Penalty).

(3) Section 11.148, Water Code, (Emergency Suspension of Permit Conditions).

(4) Section 13.411, Water Code, (Action to Enjoin or Require Compliance).

(5) Section 13.4133, Water Code, (Emergency Rate Increase in Certain Circumstances).

(6) Section 13.4151, Water Code, (Administrative Penalty) and Section 13.416, Water Code (Penalties Cumulative).

(7) Section 13.417, Water Code, (Contemp Proceedings) and Section 13.418, Water Code, (Disposition of Fines and Penalties; Water Utility Improvement Account).

(8) Section 35.004, Water Code, (Designation of Management Areas), Section 35.005, Water Code, (Petition to Designate a Groundwater Management Area), and Section 35.006, Water Code (Notice for Designation of Management Area).

(b) Repealer: Section 341.049 Health and Safety Code (Administrative Penalty) and Section 341.050, Health and Safety Code (Penalties Cumulative).

SECTION 40. Effective date: September 1, 1999.

SECTION 41. Makes application of this Act prospective.

SECTION 42. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 5.17(b), Water Code, to require the commission to hold a hearing as provided for in Section 5.504 as soon as practicable but, not later than 20, rather than 10, days after issuance of the a certain order. Deletes text regarding emergency action.

Amends Section 5.518, Water Code, to require the executive director or the commission to allocate certain requested amounts of water.

SECTION 6.

Amends Section 7.052, Water Code, sets forth certain penalties for violations including the amount of the penalty for a violation of a rule or order adopted under a certain permit.

SECTION 9.

Deletes proposed SECTION 9 and redesignates SECTIONS 10-17.

SECTION 18.

Amends Section 11.142(a), Water Code, to provide that normal storage may involve the temporary storage of certain amounts of water.

SECTION 22.

Amends Chapter 7, Water Code, to define "affiliated interests," and "affiliate." Deletes proposed Section 7.325, Water Code, regarding action to enjoin or require compliance: retail public utilities. Makes conforming changes.

SECTION 24.

Deletes proposed Section 13.417, Water Code, regarding contempt proceedings in utility actions.

SECTION 25.

Amends Section, 35.009 Water Code, to add a new heading and makes conforming changes.

SECTION 26.

Amends Section 35.012(a), Water Code, to make a conforming change.

SECTION 36.

Amends Section 5.07, Water Code, to make a conforming change.

SECTION 37.

Amends Section 5.08(a), Water Code, to make a conforming change.

SECTION 38.

Amends Section 341.0485, Water Code, to make conforming change

SECTION 39.

Deletes certain sections of the Water Code.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

April 1, 1999

TO: Honorable J.E. "Buster" Brown, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB 1311 by Brown, J. E. "Buster" (relating to the development and management of water resources), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.
--

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Natural Resource Conservation Commission

LBB Staff: JK, DE, DM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable J.E. "Buster" Brown, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1311 by Brown, J. E. "Buster" (Relating to the development and management of water resources.), **As Introduced**

No significant fiscal implication to the State is anticipated.
--

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 360 State Office of Administrative Hearings, 555 Agricultural Extension Service Texas, 302 Office Of The Attorney General, 580 Water Development Board, 582 Natural Resource Conservation Commission, 304 Comptroller of Public Accounts

LBB Staff: JK, DE, DM

REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that CSSB 1311, by: Brown,
(Bill No.) (Author/Sponsor)
was heard by the Natural Resources Committee on 3/30, 1999,
and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Carol M. Gana
(Clerk of the reporting committee)

IMPORTANT: THE YELLOW COPY OF THIS FORM AND (1) COPY OF YOUR BILL OR RESOLUTION (COMMITTEE PRINTED VERSION) MUST BE DELIVERED TO THE ADMINISTRATION OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS WILL BE ANNOUNCED ON A REGULAR BASIS.

Committee Clerks: Original to Calendar Clerk. Pink copy for committee files. Green and yellow copies to bill author/sponsor.
Author/Sponsor: Green copy for office files. Submit yellow copy to Administration with your bill.

By: M. M. M. M. M.

S.B. No. 1311

Substitute the following for S.B. No. 1311:

By: M. M. M. M. M.

C.S. S.B. No. 1311

A BILL TO BE ENTITLED

AN ACT

relating to the development and management of water resources.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. ^{Subsection (a),} Section 5.504 ^(a), Water Code, is amended to read as follows:

(a) If the commission, the executive director, or the executive director's representative issues an emergency order under this subchapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the emergency order to be held before the commission or its designee as soon as practicable after the order is issued. If the emergency order is issued under Section 5.517 or 5.518, the order shall set a time for the hearing not later than the 20th day after the date the emergency order is issued.

SECTION 2. Subchapter L, Chapter 5, Water Code, is amended by adding Sections 5.517, 5.518, 5.519, and 5.520 to read as follows:

Sec. 5.517. EMERGENCY PERMIT TO DIVERT AND USE WATER; AMENDMENT TO WATER RIGHT. (a) Except as provided by Section 5.506 and after notification to the governor, the commission by emergency order may issue a permit to divert and use water or amend an existing permit, certified filing, or certificate of adjudication for an initial period not to exceed 120 days if the commission finds that:

1 (1) emergency conditions exist that present an imminent
2 threat to the public health, safety, and welfare or the environment
3 and that override the necessity to comply with established
4 statutory procedures; and

5 (2) there is no feasible practicable alternative to the
6 emergency authorization. The emergency authorization may be
7 renewed once for a period not to exceed 60 days.

8 (b) The executive director may issue an emergency order if an
9 imminent threat to the public health, safety, and welfare or the
10 environment exists that requires emergency action before the
11 commission can take action under Subsection (a) and there is no
12 feasible alternative. If the executive director issues an
13 emergency order under this subsection, the commission shall hold a
14 hearing as provided for in Section 5.504 as soon as practicable but
15 not later than 20 days after issuance of the order to affirm,
16 modify, or set aside the order.

17 (c) The notice requirements of Section 11.132 relating to the
18 time for notice, newspaper notice, and method of giving a person
19 notice do not apply to a hearing held on an application for an
20 emergency order under this section. The commission shall give the
21 general notice of the hearing that the commission considers
22 practicable under the circumstances.

23 (d) The commission may adopt rules and impose fees necessary
24 to carry out the provisions of this section.

25 (e) An emergency order under this section does not vest in
26 the grantee any right to the diversion, impoundment, or use of
27 water and expires by its terms. / 13

1 Sec. 5.518. EMERGENCY ORDER FOR TEMPORARY TRANSFER OF USE OF
2 WATER RIGHT. (a) The commission by emergency order may grant the
3 temporary transfer and use of all or part of a surface water right
4 for other than domestic or municipal use to a retail or wholesale
5 water supplier for public health and safety purposes.

6 (b) The commission may direct the applicant to timely pay the
7 amounts for which the applicant may be potentially liable under
8 this section and to fully indemnify and hold harmless the state,
9 the executive director, and the commission from any and all
10 liability for the order sought. The commission may order bond or
11 other surety in a form acceptable to the commission as a condition
12 for an emergency order under this section. The commission may not
13 grant an emergency authorization under this section that would
14 cause a violation of a federal regulation.

15 (c) In transferring the amount of water requested by the
16 applicant, the executive director or the commission shall allocate
17 the requested amount among two or more permits, certified filings,
18 or certificates of adjudication for other than domestic or
19 municipal use.

20 (d) A person granted an emergency order under this section is
21 liable to the owner from whom the use is transferred for the fair
22 market value of the water transferred and for any damages
23 proximately caused by the transfer of use. If, within 60 days of
24 the termination of the order, the parties do not agree on the
25 amount due, or if full payment is not made, either party may file
26 a complaint with the commission to determine the amount due.

27 (e) The commission by rule shall establish a dispute

1 resolution procedure for a complaint filed under this section.
2 After exhausting all administrative remedies under this section, an
3 owner from whom the use is transferred may file suit to recover or
4 determine the amount due in a district court in the county where
5 the owner resides or has its headquarters. The prevailing party in
6 a suit filed under this subsection is entitled to recover court
7 costs and reasonable attorney's fees.

8 Sec. 5.519. EMERGENCY WORKS SAFETY ORDER. The commission may
9 issue a mandatory or prohibitory emergency order directing the
10 owner of a dam, levee, or other water-storage or flood-control work
11 to repair, modify, maintain, dewater, or remove a work if the
12 commission finds that:

13 (1) the existing condition of the work is causing or
14 will cause extensive or severe property damage or economic loss to
15 others or is posing an immediate and serious threat to human life
16 or health; and

17 (2) other procedures available to the commission to
18 remedy or prevent the occurrence will result in unreasonable delay.

19 Sec. 5.520. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
20 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
21 The commission may issue an emergency order appointing a willing
22 person to temporarily manage and operate a utility under Section
23 7.404. Notice of the action is adequate if the notice is mailed or
24 hand delivered to the last known address of the utility's
25 headquarters.

26 SECTION 3. Section 7.004, Water Code, is amended to read as
7 follows:

1 Sec. 7.004. REMEDIES CUMULATIVE. The remedies under this
2 chapter are cumulative of all other remedies. Nothing in this
3 chapter affects the right of a private corporation, [or]
4 individual, or political subdivision that has a justiciable
5 interest to pursue any available common law remedy to enforce a
6 right, to abate a condition of pollution or other nuisance, to
7 recover damages to enforce a right, or to prevent or seek redress
8 or compensation for the violation of a right or otherwise redress
9 an injury.

10 SECTION 4. Subchapter B, Chapter 7, Water Code, is amended by
11 adding Section 7.034 to read as follows:

12 Sec. 7.034. ATTORNEY'S FEES; COSTS. A district court may
13 award the costs of litigation, including reasonable attorney's fees
14 and expert costs, to any political subdivision of the state,
15 private corporation, or individual that is a water right holder and
16 that prevails in a suit for injunctive relief to redress an
17 unauthorized diversion, impoundment, or use of surface water in
18 violation of Chapter 11 or a rule adopted under Chapter 11.

19 SECTION 5. ^{Subsection (b),} ~~Section 7.051(b)~~, Water Code, is amended to read
20 as follows:

21 (b) Except as provided by this subsection, this [This]
22 subchapter does not apply to violations of Chapter [11,] 12 or [7
23 13,] 16[, or 36 of this code, or Chapter 341, Health and Safety
24 Code]. This subchapter does apply to Section 16.236.

25 SECTION 6. Section 7.052, Water Code, is amended to read as
26 follows:

27 Sec. 7.052. MAXIMUM PENALTY. (a) The amount of the penalty

1 for a violation of Chapter 18, 32, 33, or 34 of this code or
2 Chapter 366, 371, or 372, Health and Safety Code, may not exceed
3 \$2,500 a day for each violation.

4 (b) The amount of the penalty for a violation of Chapter 11
5 or a rule or order adopted under or a permit, certified filing, or
6 certificate of adjudication issued under Chapter 11 may not exceed
7 \$5,000 a day for each violation.

8 (c) The penalty for a violation of a rule or order adopted
9 under Section 16.236 may not exceed \$1,000 a day for each
10 violation.

11 (d) The amount of the penalty for a violation under Chapter
12 341, Health and Safety Code, may not be less than \$50 or more than
13 \$1,000 for each violation.

14 (e) The amount of the penalty for all other violations within
15 the jurisdiction of the commission to enforce may not exceed
16 \$10,000 a day for each violation.

17 (f) ~~(c)~~ Each day that a continuing violation occurs may be
18 considered a separate violation. The commission may authorize an
19 installment payment schedule for an administrative penalty
20 assessed under this subchapter, except for an administrative
21 penalty assessed under Section 7.057 or assessed after a hearing
22 under Section 7.058.

23 SECTION 7. Section 7.054, Water Code, is amended to read as
1 follows:

Sec. 7.054. REPORT OF VIOLATION. (a) If, after examination
of a possible violation and the facts surrounding that possible
violation, the executive director concludes that a violation has

1 occurred, the executive director may issue a preliminary report in
2 accordance with commission rules that includes recommendations
3 regarding any penalty or corrective action.

4 (b) A report regarding a possible violation under Chapter 11
5 must state the facts on which the conclusion was based and
6 recommend the amount of any penalty. The executive director shall
7 base the recommended amount of the proposed penalty on the factors
8 provided by Section 7.053 and shall analyze each factor for the
9 benefit of the commission.

10 SECTION 8. Section 7.069, Water Code, is amended to read as
11 follows:

12 Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as provided
13 by Subsection (b), a [A] penalty collected under this subchapter
14 shall be deposited to the credit of the general revenue fund.

15 (b) A penalty collected under this subchapter from a public
16 utility shall be paid to the commission and deposited in the water
17 utility improvement account as provided by Section 341.0485, Health
18 and Safety Code.

19 SECTION 9. Section 7.102, Water Code, is amended to read as
20 follows:

21 Sec. 7.102. MAXIMUM PENALTY. (a) A person who causes,
22 suffers, allows, or permits a violation of a statute, rule, order,
23 or permit relating to Chapter 11, 18, 32, 33, or 34 of this code or
24 Chapter 366, 371, or 372, Health and Safety Code, shall be assessed
25 for each violation a civil penalty not less than \$50 nor greater
26 than \$5,000 for each day of each violation as the court or jury
27 considers proper.

1 (b) The amount of a penalty for a violation of a rule or
2 order issued by the commission under Section 12.052 may not exceed
3 \$5,000.

4 (c) A person who causes, suffers, allows, or permits a
5 violation of a statute, rule, order, or permit relating to Chapter
6 13 shall be assessed for each violation a civil penalty not less
7 than \$100 nor greater than \$5,000 for each day of each violation as
8 the court or jury considers proper. cjt

9 (d) A person who causes, suffers, allows, or permits a
10 violation of a statute, rule, order, or permit relating to any
11 other matter within the commission's jurisdiction to enforce,
12 other than violations of Chapter [11,] 12 or [7, 13,] 16 [or 36] of
13 this code, or Chapter 341, Health and Safety Code, shall be
14 assessed for each violation a civil penalty not less than \$50 nor
15 greater than \$25,000 for each day of each violation as the court or
16 jury considers proper.

17 (e) Each day of a continuing violation is a separate
18 violation.

19 SECTION 10. *Subsections (a) and (c),* ~~Sections~~ 7.105(a) and (c), Water Code, are
20 amended to read as follows:

21 (a) On the request of the executive director or the
22 commission, the attorney general shall institute a suit in the name
23 of the state for injunctive relief under Section 7.032, to recover
24 a civil penalty, or for both injunctive relief and a civil penalty.
25 The attorney general may initiate a suit for recovery of a penalty
5 under this section for a violation under Section 13.414.

 (c) Except as provided by this subsection, the [The] suit may

1 be brought in Travis County, in the county in which the defendant
2 resides, or in the county in which the violation or threat of
3 violation occurs. A suit to recover a penalty for a violation of
4 a rule or order issued by the commission under Section 12.052 may
5 be brought in Travis County.

6 SECTION 11. Subchapter D, Chapter 7, Water Code, is amended
7 by adding Section 7.1075 to read as follows:

8 Sec. 7.1075. DISPOSITION OF PENALTY COLLECTED FROM PUBLIC
9 UTILITY. A penalty collected under this subchapter from a public
10 utility shall be paid to the commission and deposited in the water
11 utility improvement account as provided by Section 341.0485, Health
12 and Safety Code.

13 SECTION 12. Subchapter D, Chapter 7, Water Code, is amended
14 by adding Section 7.112 to read as follows:

15 Sec. 7.112. LIMITATION ON SUIT FOR VIOLATION OF SECTION
16 11.081. An action to collect the penalty provided by Section 7.102
17 for a violation of Section 11.081 must be brought within two years
18 from the date of the alleged violation.

19 SECTION 13. Section 7.351, Water Code, is amended to read as
20 follows:

21 Sec. 7.351. CIVIL SUITS. If it appears that a violation or
22 threat of violation of Chapter 16, 26, 28, or 34 of this code or
23 Chapter 341, 361, 371, 372, or 382, Health and Safety Code, or a
24 provision of Chapter 401, Health and Safety Code, under the
25 commission's jurisdiction or a rule adopted or an order or a permit
26 issued under those chapters or provisions has occurred or is
27 occurring in the jurisdiction of a local government, the local

1 government or, in the case of a violation of Chapter 401, Health
2 and Safety Code, a person affected as defined in that chapter, may
3 institute a civil suit under Subchapter D in the same manner as the
4 commission in a district court by its own attorney for the
5 injunctive relief or civil penalty, or both, as authorized by this
6 chapter against the person who committed, is committing, or is
7 threatening to commit the violation.

8 SECTION 14. Section 11.0843, Water Code, is amended to read
9 as follows:

10 Sec. 11.0843. FIELD CITATION. ~~[(a)]~~ Upon witnessing a
11 violation of this chapter or a rule or order or a water right
12 issued under this chapter, a watermaster or the watermaster's
13 deputy, as defined by commission rule, may issue the alleged
14 violator a field citation alleging that a violation has occurred
15 ~~[and providing the alleged violator the option of either:~~

16 ~~[(1) without admitting to or denying the alleged~~
17 ~~violation, paying an administrative penalty in accordance with the~~
18 ~~predetermined penalty amount established under Subsection (b) of~~
19 ~~this section and taking remedial action as provided in the~~
20 ~~citation; or~~

21 ~~[(2) requesting a hearing on the alleged violation in~~
22 ~~accordance with Section 11.0842 of this code.~~

23 ~~[(b) By rule the commission shall establish penalty amounts~~
24 ~~corresponding to types of violations of this chapter or rules or~~
25 ~~orders adopted or water rights issued under this chapter.~~

26 ~~[(c) A penalty collected under this section shall be~~
27 ~~deposited in the state treasury to the credit of the general~~

1 ~~revenue fund]~~.

2 SECTION 15. Section 11.085, Water Code, is amended by adding
3 Subsection (w) to read as follows:

4 (w) The requirements of this section apply to the transfer of
5 water from one river basin to another regardless of whether all or
6 any part of the water right, permit, certified filing, or
7 certificate of adjudication under which the water is authorized to
8 be used is also transferred.

9 SECTION 16. ^{Subsection (a),} Section 11.138~~(a)~~, Water Code, is amended to read
10 as follows:

11 (a) The commission may issue temporary permits for beneficial
12 purposes to the extent that they do not interfere with or adversely
13 affect prior appropriations or vested rights on the stream from
14 which water is to be diverted under such temporary permit. The
15 commission may, by appropriate order, authorize any member of the
16 commission to approve and issue temporary permits without notice
17 and hearing if it appears to such issuing party that sufficient
18 water is available at the proposed point of diversion to satisfy
19 the requirements of the temporary permit as well as all existing
20 rights. No temporary permit issued without notice and hearing
21 shall authorize more than 10 acre-feet of water, nor may it be for
22 a term in excess of one year. The commission by rule may authorize
23 the beneficial use, without a permit, of not more than 25 acre-feet
24 of water, for a term not to exceed one year, if the diversion of
25 water will not affect existing water right holders and the user of
26 the water registers the use with the commission in the manner
27 required by the commission.

1 SECTION 17. Section 11.139, Water Code, is amended to read as
2 follows:

3 Sec. 11.139. EMERGENCY AUTHORIZATIONS. ~~[(a)]~~ Except as
4 provided by Section 5.506 ~~[11.148]~~ of this code, the commission may
5 grant an emergency permit, order, or amendment to an existing
6 permit, certified filing, or certificate of adjudication under
7 Subchapter L, Chapter 5 ~~[after notice to the governor for an~~
8 ~~initial period of not more than 120 days if the commission finds~~
9 ~~that emergency conditions exist which present an imminent threat to~~
10 ~~the public health and safety and which override the necessity to~~
11 ~~comply with established statutory procedures and there are no~~
12 ~~feasible practicable alternatives to the emergency authorization.~~
13 ~~Such emergency action may be renewed once for not longer than 60~~
14 ~~days].~~

15 ~~[(b)] A person desiring to obtain an emergency authorization~~
16 ~~under this section shall submit to the commission a sworn~~
17 ~~application containing the following information:~~

18 ~~[(1)] a description of the condition of emergency~~
19 ~~justifying the granting of the emergency authorization;~~

20 ~~[(2)] a statement setting forth facts which support the~~
21 ~~findings required under this section;~~

22 ~~[(3)] an estimate of the dates on which the proposed~~
23 ~~authorization should begin and end;~~

24 ~~[(4)] a description of the action sought and the activity~~
25 ~~proposed to be allowed, mandated, or prohibited; and~~

26 ~~[(5)] any other statements or information required by the~~
27 ~~commission.~~

1 ~~[(c) If the commission finds the applicant's statement made~~
2 ~~under Subsection (b) of this section to be correct, the commission~~
3 ~~may grant emergency authorizations under this section without~~
4 ~~notice and hearing or with such notice and hearing as the~~
5 ~~commission considers practicable under the circumstances.~~

6 ~~[(d) If the commission grants an emergency authorization~~
7 ~~under this section without a hearing, the authorization shall fix~~
8 ~~a time and place for a hearing to be held before the commission.~~
9 ~~The hearing shall be held as soon after the emergency authorization~~
10 ~~is granted as is practicable but not later than 20 days after the~~
11 ~~emergency authorization is granted.~~

12 ~~[(e) At the hearing, the commission shall affirm, modify, or~~
13 ~~set aside the emergency authorization. Any hearing on an emergency~~
14 ~~authorization shall be conducted in accordance with Chapter 2001,~~
15 ~~Government Code, and rules of the commission.~~

16 ~~[(f) If an imminent threat to the public health and safety~~
17 ~~exists which requires emergency action before the commission can~~
18 ~~take action as provided by Subsections (a) through (c) of this~~
19 ~~section and there are no feasible alternatives, the executive~~
20 ~~director may grant an emergency authorization after notice to the~~
21 ~~governor. If the executive director issues an emergency~~
22 ~~authorization under this subsection, the commission shall hold a~~
23 ~~hearing as provided for in Subsections (d) and (e) of this section.~~
24 ~~The requirements of Subsection (b) of this section shall be~~
25 ~~satisfied by the applicant before action is taken by the executive~~
26 ~~director on the request for emergency authorization.~~

27 ~~[(g) The requirements of Section 11.132 of this code relating~~

1 ~~to the time for notice, newspaper notice, and method of giving a~~
2 ~~person notice do not apply to a hearing held on an application for~~
3 ~~an emergency authorization under this section, but such general~~
4 ~~notice of the hearing shall be given as the commission, under~~
5 ~~subsections (c) and (e) of this section, considers practicable~~
6 ~~under the circumstances.~~

7 ~~[(h) The commission may grant an emergency authorization~~
8 ~~under this section for the temporary transfer and use of all or~~
9 ~~part of a permit, certified filing, or certificate of adjudication~~
10 ~~for other than domestic or municipal use to a retail or wholesale~~
11 ~~water supplier for public health and safety purposes. In addition~~
12 ~~to the requirements contained in Subsection (b) of this section,~~
13 ~~the commission may direct that the applicant will timely pay the~~
14 ~~amounts for which the applicant may be potentially liable under~~
15 ~~Subsection (j) of this section and to the extent authorized by law~~
16 ~~will fully indemnify and hold harmless the state, the executive~~
17 ~~director, and the commission from any and all liability for the~~
18 ~~authorization sought. The commission may order bond or other~~
19 ~~surety in a form acceptable to the commission as a condition for~~
20 ~~such emergency authorization. The commission may not grant an~~
21 ~~emergency authorization under this section which would cause a~~
22 ~~violation of a federal regulation.~~

23 ~~[(i) In transferring the amount of water requested by the~~
24 ~~applicant, the executive director or the commission shall allocate~~
25 ~~the requested amount among two or more permits, certified filings,~~
26 ~~or certificates of adjudication for other than domestic or~~
27 ~~municipal use.~~

1 ~~[(j) The person granted an emergency authorization under~~
2 ~~subsection (h) of this section is liable to the owner and the~~
3 ~~owner's agent or lessee from whom the use is transferred for the~~
4 ~~fair market value of the water transferred as well as for any~~
5 ~~damages caused by the transfer of use. If, within 60 days of the~~
6 ~~termination of the authorization, the parties do not agree on the~~
7 ~~amount due, or if full payment is not made, either party may file~~
8 ~~a complaint with the commission to determine the amount due. The~~
9 ~~commission may use dispute resolution procedures for a complaint~~
10 ~~filed under this subsection. After exhausting all administrative~~
11 ~~remedies under this subsection, an owner from whom the use is~~
12 ~~transferred may file suit to recover or determine the amount due in~~
13 ~~a district court in the county where the owner resides or has its~~
14 ~~headquarters. The prevailing party in a suit filed under this~~
15 ~~subsection is entitled to recover court costs and reasonable~~
16 ~~attorney's fees.~~

17 ~~[(k) The commission may prescribe rules and adopt fees which~~
18 ~~are necessary to carry out the provisions of this section.~~

19 ~~[(l) An emergency authorization does not vest in the grantee~~
20 ~~any right to the diversion, impoundment, or use of water and shall~~
21 ~~expire and be cancelled in accordance with its terms.]~~

22 SECTION 18. ^{Subsection (a),} ~~(Section 11.142(a),~~ Water Code, is amended to read
23 as follows:

24 (a) Without obtaining a permit, a person may construct on his
25 own property a dam or reservoir with normal storage of not more
26 than 200 acre-feet of water for domestic and livestock purposes.
27 Normal storage may involve the temporary storage of greater than

1 200 acre-feet if the owner of the structure maintains records which
2 can demonstrate that throughout a ¹²~~twelve~~-month period an average of
3 not more than 200 acre-feet of water is impounded in such a
4 structure.

5 SECTION 19. ^{Subsection (b),} (Section 11.173^(b)), Water Code, is amended to read
6 as follows:

7 (b) A permit, certified filing, or certificate of
8 adjudication or a portion of a permit, certified filing, or
9 certificate of adjudication is exempt from cancellation under
10 Subsection (a) of this section:

11 (1) to the extent of the owner's participation in the
12 Conservation Reserve Program authorized by the Food Security Act,
13 Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985)
14 or a similar governmental program; [or] /

15 (2) if any portion of the water authorized to be used
16 pursuant to a permit, certified filing, or certificate of
17 adjudication has been used in accordance with a regional water plan
18 approved pursuant to Section 16.053 of this code;

19 (3) if the permit, certified filing, or certificate of
20 adjudication was obtained to meet demonstrated long-term public
21 water supply or electric generation needs as evidenced by a water
22 management plan developed by the holder and consistent with
23 projections of future water needs contained in the state water
24 plan; or

25 (4) if the permit, certified filing, or certificate of
26 adjudication was obtained as the result of the construction of a
27 reservoir funded, in whole or in part, by the holder of the

1 permit, certified filing, or certificate of adjudication as part of
2 the holder's long-term water planning.

3 SECTION 20. ^{Subsection (b),} ~~Section 11.177(b),~~ Water Code, is amended to read
4 as follows:

5 (b) In determining what constitutes reasonable diligence or
6 a justified nonuse as used in Subsection (a)(2) of this section,
7 the commission shall give consideration to:

8 (1) whether sufficient water is available in the source
9 of supply to meet all or part of the appropriation during the
10 10-year period of nonuse;

11 (2) whether the nonuse is justified by the holder's
12 participation in the federal Conservation Reserve Program or a
13 similar governmental program as provided by Section 11.173(b)(1) of
14 this code;

15 ~~(3) [whether the permit, certified filing, or~~
16 ~~certificate of adjudication was obtained to meet demonstrated~~
17 ~~long-term public water supply or electric generation needs as~~
18 ~~evidenced by a water management plan developed by the holder and~~
19 ~~consistent with projections of future water needs contained in the~~
20 ~~state water plan;~~

21 ~~[(4) whether the permit, certified filing, or~~
22 ~~certificate of adjudication was obtained as the result of the~~
23 ~~construction of a reservoir funded, in whole or in part, by the~~
24 ~~holder of the permit, certified filing, or certificate of~~
25 ~~adjudication as part of the holder's long-term water planning;~~

26 ~~[(5)]~~ whether the existing or proposed authorized purpose
27 and place of use are consistent with an approved regional water

1 plan as provided by Section 16.053 of this code;

2 (4) [~~6~~] whether the permit, certified filing, or
3 certificate of adjudication has been deposited into the Texas Water
4 Bank as provided by Sections 15.7031 and 15.704 of this code or
5 whether it can be shown that the water right or water available
6 under the right is currently being made available for purchase
7 through private marketing efforts; or

8 (5) [~~7~~] whether the permit, certified filing, or
9 certificate of adjudication has been reserved to provide for
10 instream flows or bay and estuary inflows.

11 SECTION 21. ^{Sub C} Sections ~~12.052~~ (c), (d), (e), and (f), ^{Section 12.052,} Water
12 Code, are amended to read as follows:

13 (c) The [~~if the~~] owner of a dam that is required to be
14 constructed, reconstructed, repaired, or removed in order to comply
15 with the rules and orders promulgated under Subsection (a) of this
16 section may not wilfully fail [~~fails~~] or refuse [~~refuses~~] to comply
17 within the 30-day period following the date of the commission's
18 final, nonappealable order to do so and may not [~~or if a person~~]
19 wilfully fail [~~fails~~] to comply with any rule or other order issued
20 by the commission under this section within the 30-day period
21 following the effective date of the order[, ~~he is liable to a~~
22 ~~penalty of not more than \$5,000 a day for each day he continues to~~
23 ~~violate this section. The state may recover the penalty by suit~~
24 ~~brought for that purpose in the district court of Travis County~~].

25 (d) The commission may issue an emergency works safety order
26 under Section 5.519. [~~If the commission determines that the~~
27 ~~existing condition of the dam is creating or will cause extensive~~

1 ~~or severe property damage or economic loss to others or is posing~~
2 ~~an immediate and serious threat to human life or health and that~~
3 ~~other procedures available to the commission to remedy or prevent~~
4 ~~the occurrence of the situation will result in unreasonable delay,~~
5 ~~the commission may issue an emergency order, either mandatory or~~
6 ~~prohibitory in nature, directing the owner of a dam to repair,~~
7 ~~modify, maintain, dewater, or remove the dam which the commission~~
8 ~~determines is unsafe. The emergency order may be issued without~~
9 ~~notice to the dam owner or with notice the commission considers~~
10 ~~practicable under the circumstances. The notice does not have to~~
11 ~~comply with Chapter 2001, Government Code.]~~

12 (e) ~~[If the commission issues an emergency order under~~
13 ~~authority of this section without notice to the dam owner, the~~
14 ~~commission shall fix a time and place for a hearing which shall be~~
15 ~~held as soon as practicable to affirm, modify, or set aside the~~
16 ~~emergency order. The notice does not have to comply with Chapter~~
17 ~~2001, Government Code. If the nature of the commission's action~~
18 ~~requires further proceedings, those proceedings shall be conducted~~
19 ~~as appropriate under the Administrative Procedure and Texas~~
20 ~~Register Act, as amended (Article 6252-13a, Vernon's Texas Civil~~
21 ~~Statutes).~~

22 ~~[(f)]~~ Nothing in this section or in rules or orders made by
23 the commission shall be construed to relieve an owner or operator
24 of a dam or reservoir of the legal duties, obligations, or
25 liabilities incident to ownership or operation.

26 SECTION 22. Chapter 7, Water Code, is amended by adding
27 Subchapter I, and Sections 13.412, 13.4131, and 13.4132, Water

Code, are transferred to Subchapter I, Chapter 7, Water Code, redesignated as Sections 7.402, 7.403, and 7.404, and amended to read as follows:

SUBCHAPTER I. RECEIVERSHIP; SUPERVISION OF CERTAIN UTILITIES

Sec. 7.401. DEFINITIONS. In this subchapter, "affiliated interest" and "affiliate" have the meanings assigned by Section 13.002.

Sec. 7.402 [~~13.412~~]. RECEIVERSHIP. (a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

(1) has abandoned operation of its facilities;

(2) informs the commission that the owner is abandoning the system;

(3) violates a final order of the commission; or

(4) allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if an appointment is necessary:

(1) to guarantee the collection of assessments, fees, penalties, or interest;

(2) to guarantee continuous and adequate service to the customers of the utility; or

(3) to prevent continued or repeated violation of the final order.

(c) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the

1 court.

2 (d) After appointment and execution of bond, the receiver
3 shall take possession of the assets of the utility specified by the
4 court. Until discharged by the court, the receiver shall perform
5 the duties that the court directs to preserve the assets and carry
6 on the business of the utility and shall strictly observe the final
7 order involved.

8 (e) On a showing of good cause by the utility, the court may
9 dissolve the receivership and order the assets and control of the
10 business returned to the utility.

11 (f) For purposes of this section and Section 7.404 [~~13.4132~~],
12 abandonment may include but is not limited to:

13 (1) failure to pay a bill or obligation owed to a retail
14 public utility or to an electric or gas utility with the result
15 that the utility service provider has issued a notice of
16 discontinuance of necessary services;

17 (2) failure to provide appropriate water or wastewater
18 treatment so that a potential health hazard results;

19 (3) failure to adequately maintain facilities, resulting
20 in potential health hazards, extended outages, or repeated service
21 interruptions;

22 (4) failure to provide customers adequate notice of a
23 health hazard or potential health hazard;

24 (5) failure to secure an alternative available water
25 supply during an outage;

26 (6) displaying a pattern of hostility toward or
27 repeatedly failing to respond to the commission or the utility's

1 customers; and

2 (7) failure to provide the commission with adequate
3 information on how to contact the utility for normal business and
4 emergency purposes.

5 (g) Notwithstanding Section 64.021, Civil Practice and
6 Remedies Code, a receiver appointed under this section may seek
7 commission approval to acquire the water or sewer utility's
8 facilities and transfer the utility's certificate of convenience
9 ^{v2}and necessity. The receiver must apply in accordance with
10 Subchapter H, Chapter 13.

11 Sec. 7.403 [~~13.4131~~]. SUPERVISION OF CERTAIN UTILITIES. (a)
12 The commission, after providing to the utility notice and an
13 opportunity for a hearing, may place a utility under supervision
14 for gross or continuing mismanagement, gross or continuing
15 noncompliance with Chapter 13 [~~this chapter~~] or commission rules,
16 or noncompliance with commission orders.

17 (b) While supervising a utility, the commission may require
18 the utility to:

19 (1) meet [~~abide by~~] conditions and requirements
20 prescribed by the commission, including:

21 (A) [~~11~~] management requirements;

22 (B) [~~12~~] additional reporting requirements;

23 (C) [~~13~~] restrictions on hiring, salary or benefit
24 increases, capital investment, borrowing, stock issuance or
25 dividend declarations, and liquidation of assets; and

26 (D) [~~14~~] a requirement that the utility place the
27 utility's funds into an account in a financial institution approved

1 by the commission and use of those funds shall be restricted to
2 reasonable and necessary utility expenses; and ~~[]~~

3 (2) ~~[(c) While supervising a utility, the commission may~~
4 ~~require that the utility]~~ obtain commission approval before taking
5 an ~~[any]~~ action ~~[that may be]~~ restricted under Subdivision (1)
6 ~~[Subsection (b)]~~ of this section.

7 (c) An ~~[Any]~~ action or transaction for which commission / 21/
8 approval is required by this section that ~~[which]~~ occurs without / 21/
9 commission approval may be voided by the commission.

10 Sec. 7.404 ~~[13.4132]~~. OPERATION OF UTILITY THAT DISCONTINUES
11 OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. (a) The
12 commission, after providing to the utility notice and an
13 opportunity to be heard by the commissioners at a commission
14 meeting, may authorize a willing person to temporarily manage and
15 operate a utility if the utility:

16 (1) has discontinued or abandoned operations or the
17 provision of services; or

18 (2) has been or is being referred to the attorney
19 general for the appointment of a receiver under Section 7.402
20 ~~[13.412]~~.

21 (b) The commission may appoint a person under this section by
22 emergency order under Section 5.507 and may authorize an emergency
23 rate increase by emergency order under Section 5.508 ~~[, and notice~~
24 ~~of the action is adequate if the notice is mailed or hand-delivered~~
25 ~~to the last known address of the utility's headquarters]~~.

26 (c) A person appointed under this section has the powers and
27 duties necessary to ensure the continued operation of the utility

1 and the provision of continuous and adequate services to customers,
2 including the power and duty to:

- 3 (1) read meters;
- 4 (2) bill for utility services;
- 5 (3) collect revenues; ✓
- 6 (4) disburse funds;
- 7 (5) access all system components; and
- 8 (6) request rate increases.

9 (d) This section does not affect the authority of the
10 commission to pursue an enforcement claim against a utility or an
11 affiliated interest.

12 SECTION 23. Section 13.414, Water Code, is amended to read as
13 follows:

14 Sec. 13.414. VIOLATION BY [~~PENALTY AGAINST~~] RETAIL PUBLIC
15 UTILITY OR AFFILIATED INTEREST. A [~~(a) Any~~] retail public utility
16 or affiliated interest may not violate [~~that violates~~] this
17 chapter, fail [~~fails~~] to perform a duty imposed on it, or fail,
18 neglect, [~~fails, neglects,~~] or refuse [~~refuses~~] to obey an order,
19 rule, direction, or requirement of the commission or decree or
20 judgment of a court [~~is subject to a civil penalty of not less than~~
21 ~~\$100 nor more than \$5,000 for each violation~~].

22 [~~(b) A retail public utility or affiliated interest commits~~
23 ~~a separate violation each day it continues to violate Subsection~~
24 ~~(a) of this section.~~

25 [~~(c) The attorney general shall institute suit on his own~~
26 ~~initiative or at the request of, in the name of, and on behalf of~~
27 ~~the commission in a court of competent jurisdiction to recover the~~

1 ~~penalty under this section.]~~

Section 35.008

2 SECTION 24. ^{Sub}~~Sections 35.008~~(b), (c), and (d), Water Code, are
3 amended to read as follows:

4 (b) The commission shall call a public comment [an / 24/
5 ~~evidentiary~~] hearing to consider:

6 (1) the designation of a priority groundwater management
7 area;

8 (2) whether a district should be created over all or
9 part of a priority groundwater management area; or

10 (3) whether all or part of the land in the priority
11 groundwater management area should be added to an existing
12 district.

13 (c) Public comment [~~Evidentiary~~] hearings shall be held at a
14 location in one of the counties in which the priority groundwater
15 management area is located, or proposed to be located, or in the
16 nearest convenient location if adequate facilities are not
17 available in those counties.

18 (d) At the public comment hearing, the commission shall hear
19 testimony and receive evidence from affected persons. The
20 commission shall consider the executive director's report and
21 supporting information and the testimony and evidence received at
22 the public comment hearing. If the commission considers further
23 information necessary, the commission may request such information
24 from any source.

25 SECTION 25. Section 35.009, Water Code, is amended to read as
26 follows:

27 Sec. 35.009. NOTICE AND PUBLIC COMMENT HEARING. (a) The

commission shall have notice of the public comment hearing published in at least one newspaper with general circulation in the county or counties in which the area proposed for designation as a priority groundwater management area or the area within a priority groundwater management area being considered for district creation or for addition to an existing district is located. Notice must be published not later than the 30th day before the date set for the commission to consider the designation of the priority groundwater management area, the creation of a district in a priority groundwater management area, or the addition of land in a priority groundwater management area to an existing district.

(b) The notice must include:

(1) if applicable, a statement of the general purpose and effect of designating the proposed priority groundwater management area;

(2) if applicable, a statement of the general purpose and effect of creating a district in the priority groundwater management area;

(3) if applicable, a statement of the general purpose and effect of adding all or part of the land in the priority groundwater management area to an existing district;

(4) a map generally outlining the boundaries of the area being considered for priority groundwater management area designation or the priority groundwater management area being considered for district creation or for addition to an existing district, or notice of the location at which a copy of the map may be examined or obtained;

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1 (5) a statement that the executive director's report
2 concerning the priority groundwater management area or proposed
3 area is available at the commission's main office in Austin, Texas,
4 and at regional offices of the commission for regions which include
5 territory within the priority groundwater management area or
6 proposed priority groundwater management area and that the report
7 is available for inspection during regular business hours;

8 (6) a description or the name of the locations in the
9 affected area at which the commission has provided copies of the
10 executive director's report to be made available for public
11 inspection;

12 (7) the name and address of each public library, each
13 county clerk's office, and each district to which the commission
14 has provided copies of the executive director's report; and

15 (8) the date, time, and place of the public comment
16 hearing.

17 (c) The commission shall also give written notice of the
18 date, time, place, and purpose of the public comment hearing to the
19 governing body of each county, regional water planning group,
20 adjacent groundwater district, municipality, river authority, water
21 district, or other entity which supplies public drinking water,
22 including each holder of a certificate of convenience and necessity
23 issued by the commission, and of each irrigation district, located
24 either in whole or in part in the priority groundwater management
25 area or proposed priority groundwater management area. The notice
26 must be given before the 30th day preceding the date set for the
27 public comment hearing.

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1 SECTION 26. ^{Subsection (a),} Section 35.012(a), Water Code, is/amended to read
2 as follows:

3 (a) At the conclusion of its public comment hearing and
4 considerations, the commission shall issue an order stating its
5 findings and conclusions.

6 SECTION 27. Chapter 35, Water Code, is amended by adding
7 Section 35.010 to read as follows:

8 Sec. 35.010. CREATION OF DISTRICTS ON PETITION AFTER
9 DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA. The
10 commission may not consider the creation of a groundwater
11 conservation district in a designated priority groundwater
12 management area before the conclusion of the next regular session
13 of the Texas Legislature following the designation unless the local
14 landowners have initiated a petition process under Chapter 36 for
15 the creation of a groundwater conservation district with a priority
16 groundwater management area.

17 SECTION 28. Section 35.012, Water Code, is amended by adding
18 new Subsections (c) and (d), relettering existing Subsections (c),
19 (d), (e), and (f) as Subsections (e), (f), (g), and (h), and
20 amending existing Subsection (d) to read as follows:

21 (c) Not later than the 10th day after the date on which the
22 commission order designating a priority groundwater management area
23 is issued, the commission shall send written notice of the
24 commission's actions to each landowner in the designated priority
25 groundwater management area at the landowner's most recent known
26 address as shown in the tax rolls of the county in which the land
27 is located. The notice must include the commission's findings and

1 conclusions from the data and information considered in designating
2 the priority groundwater management area and the commission's
3 recommendation regarding the need for a groundwater conservation
4 district in the priority groundwater management area.

5 (d) As soon as possible after a commission order designating
6 a priority groundwater management area, the Texas Agricultural
7 Extension Service shall begin an educational program within the
8 area with the assistance and cooperation of the Texas Water
9 Development Board, the commission, the Department of Agriculture,
10 other state agencies, and existing districts to inform the
11 residents of the status of the area's water resources and
12 management options including possible formation of a district.

13 (e) Following the issuance of a commission order under
14 Subsection (b), the landowners in the priority groundwater
15 management area may:

16 (1) create one or more districts under Subchapter B,
17 Chapter 36;

18 (2) have the area annexed to a district that adjoins the
19 area; or

20 (3) create one or more districts through the legislative
21 process.

22 (f) [(d)] The commission shall identify the areas subject to
23 the order of the commission issued under Subsection (b) that have
24 not been incorporated into a district and shall delineate proposed
25 boundaries of a district to include those areas. ~~[If the~~
26 ~~commission proposes the creation of one or more districts, the~~ / 30/31
27 ~~Texas Agricultural Extension Service shall begin an educational~~

1 ~~program within such areas with the assistance and cooperation of~~
2 ~~the Texas Water Development Board, the commission, other state~~
3 ~~agencies, and existing districts to inform the residents of the~~
4 ~~status of the area's water resources and management options~~
5 ~~including possible formation of a district, before beginning the~~
6 ~~procedures for creation of a district provided in Subchapter B,~~
7 ~~Chapter 36.]~~

8 (g) ~~(f)~~ If the commission fails to find that the district
9 would be a benefit to the land and other property within the
10 priority groundwater management area, that there is a public need
11 for the district, or that creation of the district will further the
12 public welfare, the commission shall issue an order stating that a
13 district should not be created within the boundaries of the
14 priority groundwater management area.

15 (h) ~~(f)~~ An order of the commission issued under this
16 section may not be appealed.

17 SECTION 29. Section 36.014, Water Code, is amended to read as
18 follows:

19 Sec. 36.014. NOTICE AND HEARING ON DISTRICT CREATION. ~~(a)~~
20 If a petition is filed under Section 36.013 or the commission
21 proposes that a district be created under Section 35.012(b), the
22 commission shall give notice of the ~~(an)~~ application or proposal as
23 required by Section 49.011(a) and may conduct a hearing on the
24 application or proposal if the commission determines that a hearing
25 is necessary under Section 49.011. /

26 ~~(b) If the petition contains a request to create a~~
27 ~~management area in all or part of the proposed district, the notice~~

1 ~~must also be given in accordance with the requirements in Section~~
2 ~~35.006 for the designation of management areas.]~~

3 SECTION 30. Section 36.015, Water Code, is amended to read as
4 follows:

5 Sec. 36.015. FINDINGS. (a) If the commission finds that a
6 district requested by petition or proposed by the commission is
7 feasible and practicable, ~~[that it]~~ would be a benefit to the land
8 in the district, and ~~[that it]~~ would be a public benefit or
9 utility, the commission shall issue an order containing these
10 findings granting the petition or adopting the proposal, as
11 appropriate.

12 (b) If the commission finds that a district is not feasible
13 and practicable, that it would not be a benefit to the land in the
14 district, that it would not be a public benefit or utility, or that
15 it is not needed, the commission by order shall deny the petition
16 or reject the proposal, as appropriate.

17 (c) The commission may adjust the boundaries of the proposed
18 district to exclude any land that would not be benefited by
19 inclusion in the district and is not necessary to the district for
20 proper regulation of the groundwater reservoir.

21 (d) If the commission grants the petition or adopts the
22 proposal to create the district, it shall direct in its order
23 creating the district that an election be called by the temporary
24 directors to confirm the creation of the district and to elect
25 permanent directors.

26 (e) ~~[The refusal to grant a petition to create a district~~
27 ~~does not invalidate or affect the designation of any management~~

1 ~~area requested in the same petition.~~

2 ~~[(f)]~~ The commission shall act on the petition or its
3 proposal within a reasonable amount of time.

4 SECTION 31. Subchapter D, Chapter 36, Water Code, is amended
5 by adding Section 36.1074 to read as follows:

6 Sec. 36.1074. EXTENSION OF DISTRICT AUTHORITY TO ADDITIONAL
7 AQUIFERS WITHIN DISTRICT'S GEOGRAPHIC BOUNDARIES. (a) The
8 commission by rule shall establish a procedure by which a district
9 created by special law may petition to extend the district's
10 authority to include management of any aquifer within the
11 geographic boundaries of the district the management of which is
12 not provided for by the special law creating any district.

13 (b) Rules adopted by the commission under this section shall
14 establish grounds for a petition described by Subsection (a),
15 including:

- 16 (1) a change in pumping conditions;
17 (2) a change in water quality conditions;
18 (3) a finding that another aquifer is affecting water
19 levels in the primary managed aquifer; and
20 (4) other grounds the commission may specify.

21 (c) A petition under this section may be granted only by
22 order of the commission.

23 SECTION 32. Section 36.0151, Water Code, is amended to read / ^{33/34}
24 as follows:

25 Sec. 36.0151. NOTICE OF CREATION BY COMMISSION OF DISTRICT
26 FOR PRIORITY GROUNDWATER MANAGEMENT AREA. [(a) If the commission
27 proposes that a district be created under Section 35.012(d), it

1 ~~shall in its order creating the district provide that temporary~~
2 ~~directors be appointed under Section 36.016 and that an election be~~
3 ~~called by the temporary directors to confirm the creation of the~~
4 ~~district and to elect permanent directors.~~

5 ~~[(b)]~~ The commission shall notify the county commissioners
6 court of each county with territory in the district of the
7 district's creation as soon as practicable after issuing the order
8 under Section 36.015(a) creating a [the] district proposed by the
9 commission under Section 35.012(b).

10 SECTION 33. Section 36.108, Water Code, is amended to read as
11 follows:

12 Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA OR PRIORITY
13 GROUNDWATER MANAGEMENT AREA. (a) If two or more districts are
14 located within the boundaries of the same management area or
15 priority groundwater management area, each district shall prepare
16 a comprehensive management plan as required by Section 36.1071
17 covering that district's respective territory. On completion of
18 the plan, each district shall forward a copy of the new revised
19 management plan to the other districts in the management area or
20 priority groundwater management area.

21 (b) The board of directors of each district in the management
22 area or priority groundwater management area may, by ¹/resolution,
23 call a joint meeting with the boards of directors of the other
24 districts in the management area or priority groundwater management
25 area to review the management plans and accomplishments for the
26 management area or priority groundwater management area. The
27 boards shall meet to consider the plans individually and shall

1 compare them to other management plans then in force in the
2 management area. In reviewing the management plans, the boards
3 shall consider:

4 (1) the goals of each management plan and its impact on
5 planning throughout the management area or priority groundwater
6 management area;

7 (2) the effectiveness of the measures established by
8 each management plan for conserving and protecting groundwater and
9 preventing waste, and the effectiveness of these measures in the
10 management area or priority groundwater management area generally;
11 and

12 (3) any other matters that the boards consider relevant
13 to the protection and conservation of groundwater and the
14 prevention of waste in the management area or priority groundwater
15 management area.

16 (c) A joint meeting of the boards of directors must be held
17 in accordance with the Open Meetings Act, Chapter 551, Government
18 Code. Notice of the meeting shall be given in accordance with the
19 requirements for notice of district board of directors meetings
20 under that Act. In addition, notice of the meeting shall be
21 published not later than the 30th day before the date of the/
22 scheduled meeting in a newspaper with general circulation in each
23 county in the management area or priority groundwater management
24 area.

25 (d) A district in the management area or priority groundwater
26 management area may file a petition with the commission requesting
27 an inquiry if the petitioner district believes that:

1 (1) another district in the management area or priority
2 groundwater management area has failed to adopt rules;

3 (2) the groundwater in the management area or priority
4 groundwater management area is not adequately protected by the
5 rules adopted by another district; or

6 (3) the groundwater in the management area or priority
7 groundwater management area is not adequately protected due to the
8 failure of another district to enforce substantial compliance with
9 its rules.

10 (e) Not later than the 90th day after the date the petition
11 is filed, the commission shall review the petition and either:

12 (1) dismiss it if it finds that the evidence is not
13 adequate to show that any of the conditions alleged in the petition
14 exist; or

15 (2) select a review panel as provided in Subsection (f).

16 (f) The commission may appoint a review panel consisting of
17 a chairman and four other members. A director or general manager
18 of a district located outside the management area or priority
19 groundwater management area that is the subject of the petition may / 21/27
20 be appointed to the review panel. The commission may not appoint
21 more than two members of the review panel from any one district.
22 The commission also shall appoint a disinterested person to serve
23 as a nonvoting recording secretary for the review panel. The
24 recording secretary may be an employee of the commission. The
25 recording secretary shall record and document the proceedings of
26 the panel.

27 (g) Not later than the 120th day after appointment, the

1 review panel shall review the petition and any evidence relevant to
2 the petition and, in a public meeting, prepare a report to the
3 commission. The commission may direct the review panel to conduct
4 public hearings at a location in the management area or priority
5 groundwater management area to take evidence on the petition. The
6 review panel may attempt to negotiate a settlement or resolve the
7 dispute by any lawful means.

8 (h) In its report, the review panel shall include:

9 (1) a summary of all evidence taken in any hearing on
10 the petition;

11 (2) a list of findings and recommended actions
12 appropriate for the commission to take and the reasons it finds
13 those actions appropriate; and

14 (3) any other information the panel considers
15 appropriate.

16 SECTION 34. Section 341.047, Health and Safety Code, is
17 transferred to Subchapter E, Chapter 7, Water Code, redesignated as
18 Section 7.1605, Water Code, and amended to read as follows: 5/1/25

19 Sec. 7.1605 [~~341.047~~]. VIOLATIONS RELATING TO PUBLIC DRINKING
20 WATER [~~CRIMINAL PENALTY~~]. (a) A person commits an offense if the
21 person:

22 (1) violates a provision of Section 341.031, Health and
23 Safety Code;

24 (2) violates a provision of Section 341.032(a) or (b),
25 Health and Safety Code;

26 (3) violates a provision of Section 341.033(a)-(f),
27 Health and Safety Code;

1 (4) constructs a drinking water supply system without
2 submitting completed plans and specifications as required by
3 Section 341.035(c), Health and Safety Code;

4 (5) begins construction of a drinking water supply
5 system without the commission's approval as required by Section
6 341.035(a), Health and Safety Code;

7 (6) violates a provision of Section 341.0351 or
8 341.0352, Health and Safety Code;

9 (7) fails to remove a sign as required by Section
10 341.0354, Health and Safety Code; or

11 (8) violates a provision of Section 341.036, Health and
12 Safety Code.

13 (b) An offense under Subsection (a) is a Class C
14 misdemeanor.

15 (c) If it is shown on a trial of the defendant that the
16 defendant has been convicted of an offense under Subsection (a)
17 within a year before the date on which the offense being tried / 3/31
18 occurred, the subsequent offense under Subsection (a) is a Class B
19 misdemeanor.

20 (d) Each day of a continuing violation is a separate offense.

21 SECTION 35. Section 341.048, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 341.048. VIOLATION [~~CIVIL ENFORCEMENT~~]. [~~(a)~~] A person
24 may not cause, suffer, allow, or permit a violation of this
25 subchapter or a rule or order adopted under this subchapter.

26 [~~(b)~~] ~~A person who causes, suffers, allows, or permits a~~
27 ~~violation under this subchapter shall be assessed a civil penalty~~

1 ~~of not less than \$50 nor more than \$1,000 for each violation. Each~~
2 ~~day of a continuing violation is a separate violation.~~

3 ~~[(c) If it appears that a person has violated, is violating,~~
4 ~~or threatens to violate a provision under this subchapter, the~~
5 ~~commission, a county, or a municipality may institute a civil suit~~
6 ~~in a district court for:~~

7 ~~[(1) injunctive relief to restrain the person from~~
8 ~~continuing the violation or threat of violation;~~

9 ~~[(2) the assessment and recovery of a civil penalty; or~~

10 ~~[(3) both injunctive relief and a civil penalty.~~

11 ~~[(d) The commission is a necessary and indispensable party in~~
12 ~~a suit brought by a county or municipality under this section.~~

13 ~~[(e) On the commission's request, the attorney general shall~~
14 ~~institute a suit in the name of the state for injunctive relief, to~~ / 39/40
15 ~~recover a civil penalty, or for both injunctive relief and civil~~
16 ~~penalty.~~

17 ~~[(f) The suit may be brought in:~~

18 ~~[(1) Travis County;~~

19 ~~[(2) the county in which the defendant resides; or~~

20 ~~[(3) the county in which the violation or threat of~~
21 ~~violation occurs.~~

22 ~~[(g) In a suit under this section to enjoin a violation or~~
23 ~~threat of violation of this subchapter, the court shall grant the~~
24 ~~state, county, or municipality, without bond or other undertaking,~~
25 ~~any injunction that the facts may warrant including temporary~~
26 ~~restraining orders, temporary injunctions after notice and hearing,~~
27 ~~and permanent injunctions.~~

1 ~~[(h) Civil penalties recovered in a suit brought under this~~
2 ~~section by a county or municipality shall be equally divided~~
3 ~~between:~~

4 ~~[(1) the state; and~~

5 ~~[(2) the county or municipality that first brought the~~
6 ~~suit.]~~

7 SECTION 36. Section 5.507, Water Code, is amended to read as
8 follows:

9 Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
10 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
11 The commission may issue an emergency order appointing a willing
12 person to temporarily manage and operate a utility under Section
13 7.404 ~~[13.4132]~~. Notice of the action is adequate if the notice is / 4c/4,
14 mailed or hand delivered to the last known address of the utility's
15 headquarters.

16 SECTION 37. *Subsection (a),* Section 5.508 ~~(a)~~, Water Code, is amended to read
17 as follows:

18 (a) Notwithstanding the requirements of Section 13.187, the
19 commission may authorize an emergency rate increase for a utility
20 for which a person has been appointed under Section 5.507 or 7.404⁴
21 ~~[13.412]~~ or for which a receiver has been appointed under Section
22 7.402² ~~[13.4132]~~ if the increase is necessary to ensure the
23 provision of continuous and adequate services to the utility's
24 customers.

25 SECTION 38. *Subsection (c),* Section 341.0485 ~~(e)~~, Health and Safety Code, is
26 amended to read as follows:

27 (c) The comptroller shall manage the account for the benefit

1 of the commission and shall invest the money and deposit interest
2 and other investment proceeds in the account. The comptroller
3 shall release money from the account in the manner provided by the
4 commission. Money in the account may be used only for:

5 (1) capital improvements to the water or sewer system of
6 a utility that has paid fines or penalties under this chapter or
7 under Chapter 13, Water Code, that have been deposited in the
8 account; or

9 (2) capital improvements and operating and maintenance
10 expenses for a utility placed in receivership or under a temporary
11 manager under Section 7.404 [~~13.4132~~], Water Code.

12 SECTION 39. (a) The following sections of the Water Code/are
13 repealed: 41/42

- 14 (1) Section 11.082;
15 (2) Sections 11.0841 and 11.0842;
16 (3) Section 11.148;
17 (4) Section 13.411;
18 (5) Section 13.4133;
19 (6) Sections 13.4151 and 13.416;
20 (7) Sections 13.417 and 13.418; and
21 (8) Sections 35.004, ^{35.005, and} 35.006.

22 (b) Sections.341.049 and 341.050, Health and Safety Code, are
23 repealed.

24 SECTION 40. This Act takes effect September 1, 1999.

25 SECTION 41. (a) The changes in law made by this Act apply
26 only to an offense committed or a violation or threat of violation
27 that occurs on or after September 1, 1999. For purposes of this

1 section an offense is committed and a violation or threat of
2 violation occurs before September 1, 1999, if any element of the
3 offense, violation, or threat of violation occurs before that date.

4 (b) An offense committed or a violation or threat of
5 violation that occurred before September 1, 1999, is covered by the
6 law in effect when the offense was committed or the violation or
7 threat of violation occurred, and the former law is continued in
8 effect for that purpose.

9 SECTION 42. The importance of this legislation and the
10 crowded condition of the calendars in both houses create an
11 emergency and an imperative public necessity that the / 42, 43
12 constitutional rule requiring bills to be read on three several
13 days in each house be suspended, and this rule is hereby suspended.

April 15 19 99 Engrossed

Engrossing Clerk

By: Brown

S.B. No. 1311

A BILL TO BE ENTITLED

AN ACT

1 relating to the development and management of the water resources.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

3 SECTION 1. Subsection (a), Section 5.504, Water Code, is
4 amended to read as follows:

5 (a) If the commission, the executive director, or the
6 executive director's representative issues an emergency order under
7 this subchapter without a hearing, the order shall set a time and
8 place for a hearing to affirm, modify, or set aside the emergency
9 order to be held before the commission or its designee as soon as
10 practicable after the order is issued. If the emergency order is
11 issued under Section 5.517 or 5.518, the order shall set a time for
12 the hearing not later than the 20th day after the date the
13 emergency order is issued.

14 SECTION 2. Subchapter L, Chapter 5, Water Code, is amended
15 by adding Sections 5.517, 5.518, 5.519, and 5.520 to read as
16 follows:

17 Sec. 5.517. EMERGENCY PERMIT TO DIVERT AND USE WATER;
18 AMENDMENT TO WATER RIGHT. (a) Except as provided by Section 5.506
19 and after notification to the governor, the commission by emergency
20 order may issue a permit to divert and use water or amend an
21 existing permit, certified filing, or certificate of adjudication
22 for an initial period not to exceed 120 days if the commission
23 finds that:

24 (1) emergency conditions exist that present an

1 imminent threat to the public health, safety, and welfare or the
2 environment and that override the necessity to comply with
3 established statutory procedures; and

4 (2) there is no feasible practicable alternative to
5 the emergency authorization. The emergency authorization may be
6 renewed once for a period not to exceed 60 days.

7 (b) The executive director may issue an emergency order if
8 an imminent threat to the public health, safety, and welfare or the
9 environment exists that requires emergency action before the
10 commission can take action under Subsection (a) and there is no
11 feasible alternative. If the executive director issues an
12 emergency order under this subsection, the commission shall hold a
13 hearing as provided for in Section 5.504 as soon as practicable but
14 not later than 20 days after issuance of the order to affirm,
15 modify, or set aside the order.

16 (c) The notice requirements of Section 11.132 relating to
17 the time for notice, newspaper notice, and method of giving a
18 person notice do not apply to a hearing held on an application for
19 an emergency order under this section. The commission shall give
20 the general notice of the hearing that the commission considers
21 practicable under the circumstances.

22 (d) The commission may adopt rules and impose fees necessary
23 to carry out the provisions of this section.

24 (e) An emergency order under this section does not vest in
25 the grantee any right to the diversion, impoundment, or use of
26 water and expires by its terms.

1 Sec. 5.518. EMERGENCY ORDER FOR TEMPORARY TRANSFER OF USE OF
2 WATER RIGHT. (a) The commission by emergency order may grant the
3 temporary transfer and use of all or part of a surface water right
4 for other than domestic or municipal use to a retail or wholesale
5 water supplier for public health and safety purposes.

6 (b) The commission may direct the applicant to timely pay
7 the amounts for which the applicant may be potentially liable under
8 this section and to fully indemnify and hold harmless the state,
9 the executive director, and the commission from any and all
10 liability for the order sought. The commission may order bond or
11 other surety in a form acceptable to the commission as a condition
12 for an emergency order under this section. The commission may not
13 grant an emergency authorization under this section that would
14 cause a violation of a federal regulation.

15 (c) In transferring the amount of water requested by the
16 applicant, the executive director or the commission shall allocate
17 the requested amount among two or more permits, certified filings,
18 or certificates of adjudication for other than domestic or
19 municipal use.

20 (d) A person granted an emergency order under this section
21 is liable to the owner from whom the use is transferred for the
22 fair market value of the water transferred and for any damages
23 proximately caused by the transfer of use. If, within 60 days of
24 the termination of the order, the parties do not agree on the
25 amount due, or if full payment is not made, either party may file a
26 complaint with the commission to determine the amount due.

1 (e) The commission by rule shall establish a dispute
2 resolution procedure for a complaint filed under this section.
3 After exhausting all administrative remedies under this section, an
4 owner from whom the use is transferred may file suit to recover or
5 determine the amount due in a district court in the county where
6 the owner resides or has its headquarters. The prevailing party in
7 a suit filed under this subsection is entitled to recover court
8 costs and reasonable attorney's fees.

9 Sec. 5.519. EMERGENCY WORKS SAFETY ORDER. The commission
10 may issue a mandatory or prohibitory emergency order directing the
11 owner of a dam, levee, or other water-storage or flood-control work
12 to repair, modify, maintain, dewater, or remove a work if the
13 commission finds that:

14 (1) the existing condition of the work is causing or
15 will cause extensive or severe property damage or economic loss to
16 others or is posing an immediate and serious threat to human life
17 or health; and

18 (2) other procedures available to the commission to
19 remedy or prevent the occurrence will result in unreasonable delay.

20 Sec. 5.520. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
21 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
22 The commission may issue an emergency order appointing a willing
23 person to temporarily manage and operate a utility under Section
24 7.404. Notice of the action is adequate if the notice is mailed or
25 hand delivered to the last known address of the utility's
26 headquarters.

1 SECTION 3. Section 7.004, Water Code, is amended to read as
2 follows:

3 Sec. 7.004. REMEDIES CUMULATIVE. The remedies under this
4 chapter are cumulative of all other remedies. Nothing in this
5 chapter affects the right of a private corporation, [or]
6 individual, or political subdivision that has a justiciable
7 interest to pursue any available common law remedy to enforce a
8 right, to abate a condition of pollution or other nuisance, to
9 recover damages to enforce a right, or to prevent or seek redress
10 or compensation for the violation of a right or otherwise redress
11 an injury.

12 SECTION 4. Subchapter B, Chapter 7, Water Code, is amended
13 by adding Section 7.034 to read as follows:

14 Sec. 7.034. ATTORNEY'S FEES; COSTS. A district court may
15 award the costs of litigation, including reasonable attorney's fees
16 and expert costs, to any political subdivision of the state,
17 private corporation, or individual that is a water right holder and
18 that prevails in a suit for injunctive relief to redress an
19 unauthorized diversion, impoundment, or use of surface water in
20 violation of Chapter 11 or a rule adopted under Chapter 11.

21 SECTION 5. Subsection (b), Section 7.051, Water Code, is
22 amended to read as follows:

23 (b) Except as provided by this subsection, this [This]
24 subchapter does not apply to violations of Chapter [117] 12 or [7
25 137] 16[7-or-36-of-this-code7-or-Chapter--3417--Health--and--Safety
26 Code]. This subchapter does apply to Section 16.236.

1 SECTION 6. Section 7.052, Water Code, is amended to read as
2 follows:

3 Sec. 7.052. MAXIMUM PENALTY. (a) The amount of the penalty
4 for a violation of Chapter 18, 32, 33, or 34 of this code or
5 Chapter 366, 371, or 372, Health and Safety Code, may not exceed
6 \$2,500 a day for each violation.

7 (b) The amount of the penalty for a violation of Chapter 11
8 or a rule or order adopted under or a permit, certified filing, or
9 certificate of adjudication issued under Chapter 11 may not exceed
10 \$5,000 a day for each violation.

11 (c) The penalty for a violation of a rule or order adopted
12 under Section 16.236 may not exceed \$1,000 a day for each
13 violation.

14 (d) The amount of the penalty for a violation under Chapter
15 341, Health and Safety Code, may not be less than \$50 or more than
16 \$1,000 for each violation.

17 (e) The amount of the penalty for all other violations
18 within the jurisdiction of the commission to enforce may not exceed
19 \$10,000 a day for each violation.

20 (f) [~~te~~] Each day that a continuing violation occurs may be
21 considered a separate violation. The commission may authorize an
22 installment payment schedule for an administrative penalty assessed
23 under this subchapter, except for an administrative penalty
24 assessed under Section 7.057 or assessed after a hearing under
25 Section 7.058.

26 SECTION 7. Section 7.054, Water Code, is amended to read as

1 follows:

2 Sec. 7.054. REPORT OF VIOLATION. (a) If, after examination
3 of a possible violation and the facts surrounding that possible
4 violation, the executive director concludes that a violation has
5 occurred, the executive director may issue a preliminary report in
6 accordance with commission rules that includes recommendations
7 regarding any penalty or corrective action.

8 (b) A report regarding a possible violation under Chapter 11
9 must state the facts on which the conclusion was based and
10 recommend the amount of any penalty. The executive director shall
11 base the recommended amount of the proposed penalty on the factors
12 provided by Section 7.053 and shall analyze each factor for the
13 benefit of the commission.

14 SECTION 8. Section 7.069, Water Code, is amended to read as
15 follows:

16 Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as provided
17 by Subsection (b), a [A] penalty collected under this subchapter
18 shall be deposited to the credit of the general revenue fund.

19 (b) A penalty collected under this subchapter from a public
20 utility shall be paid to the commission and deposited in the water
21 utility improvement account as provided by Section 341.0485, Health
22 and Safety Code.

23 SECTION 9. Section 7.102, Water Code, is amended to read as
24 follows:

25 Sec. 7.102. MAXIMUM PENALTY. (a) A person who causes,
26 suffers, allows, or permits a violation of a statute, rule, order,

1 or permit relating to Chapter 11, 18, 32, 33, or 34 of this code or
2 Chapter 366, 371, or 372, Health and Safety Code, shall be assessed
3 for each violation a civil penalty not less than \$50 nor greater
4 than \$5,000 for each day of each violation as the court or jury
5 considers proper.

6 (b) The amount of a penalty for a violation of a rule or
7 order issued by the commission under Section 12.052 may not exceed
8 \$5,000.

9 (c) A person who causes, suffers, allows, or permits a
10 violation of a statute, rule, order, or permit relating to Chapter
11 13 shall be assessed for each violation a civil penalty not less
12 than \$100 nor greater than \$5,000 for each day of each violation as
13 the court or jury considers proper.

14 (d) A person who causes, suffers, allows, or permits a
15 violation of a statute, rule, order, or permit relating to any
16 other matter within the commission's jurisdiction to enforce, other
17 than violations of Chapter [117]12 or [7-137] 16[7-or--36] of this
18 code, or Chapter 341, Health and Safety Code, shall be assessed for
19 each violation of a civil penalty not less than \$50 nor greater
20 than \$25,000 for each day of each violation as the court or jury
21 considers proper.

22 (e) Each day of a continuing violation is a separate
23 violation.

24 SECTION 10. Subsections (a) and (c), Section 7.105, Water
25 Code, are amended to read as follows:

26 (a) On the request of the executive director or the

1 commission, the attorney general shall institute a suit in the name
2 of the state for injunctive relief under Section 7.032, to recover
3 a civil penalty, or for both injunctive relief and a civil penalty.
4 The attorney general may initiate a suit for recovery of a penalty
5 under this section for a violation under Section 13.414.

6 (c) Except as provided by this subsection, the [The] suit
7 may be brought in Travis County, in the county in which the
8 defendant resides, or in the county in which the violation or
9 threat of violation occurs. A suit to recover a penalty for a
10 violation of a rule or order issued by the commission under Section
11 12.052 may be brought in Travis County.

12 SECTION 11. Subchapter D, Chapter 7, Water Code, is amended
13 by adding Section 7.1075 to read as follows:

14 Sec. 7.1075. DISPOSITION OF PENALTY COLLECTED FROM PUBLIC
15 UTILITY. A penalty collected under this subchapter from a public
16 utility shall be paid to the commission and deposited in the water
17 utility improvement account as provided by Section 341.0485, Health
18 and Safety Code.

19 SECTION 12. Subchapter D, Chapter 7, Water Code, is amended
20 by adding Section 7.112 to read as follows:

21 Sec. 7.112. LIMITATION ON SUIT FOR VIOLATION OF SECTION
22 11.081. An action to collect the penalty provided by Section 7.102
23 for a violation of Section 11.081 must be brought within two years
24 from the date of the alleged violation.

25 SECTION 13. Section 7.351, Water Code, is amended to read as
26 follows:

1 Sec. 7.351. CIVIL SUITS. If it appears that a violation or
2 threat of violation of Chapter 16, 26, 28, or 34 of this code or
3 Chapter 341, 361, 371, 372, or 382, Health and Safety Code, or a
4 provision of Chapter 401, Health and Safety Code, under the
5 commission's jurisdiction or a rule adopted or an order or a permit
6 issued under those chapters or provisions has occurred or is
7 occurring in the jurisdiction of a local government, the local
8 government or, in the case of a violation of Chapter 401, Health
9 and Safety Code, a person affected as defined in that chapter, may
10 institute a civil suit under Subchapter D in the same manner as the
11 commission in a district court by its own attorney for the
12 injunctive relief or civil penalty, or both, as authorized by this
13 chapter against the person who committed, is committing, or is
14 threatening to commit the violation.

15 SECTION 14. Section 11.0843, Water Code, is amended to read
16 as follows:

17 Sec. 11.0843. FIELD CITATION. ~~[(a)]~~ Upon witnessing a
18 violation of this chapter or a rule or order or a water right
19 issued under this chapter, a watermaster or the watermaster's
20 deputy, as defined by commission rule, may issue the alleged
21 violation a field citation alleging that a violation has occurred
22 ~~[and-providing-the-alleged-violator-the-option-of-either-~~

23 ~~[(1)]--without--admitting--to--or--denying--the--alleged~~
24 ~~violation,--paying-an-administrative-penalty-in-accordance-with-the~~
25 ~~predetermined-penalty-amount-established-under--Subsection--(b)--of~~
26 ~~this--section--and--taking--remedial--action--as--provided--in--the~~

1 citation, or

2 ~~[(2)--requesting--a-hearing-on-the-alleged-violation-in~~
3 ~~accordance-with-Section-11-0842-of-this-code-~~

4 ~~[(b)--By-rule-the-commission-shall-establish-penalty--amounts~~
5 ~~corresponding--to--types--of-violations-of-this-chapter-or-rules-or~~
6 ~~orders-adopted-or-water-rights-issued-under-this-chapter-~~

7 ~~[(c)--A-penalty--collected--under--this--section--shall--be~~
8 ~~deposited--in--the--state--treasury--to--the--credit-of-the-general~~
9 ~~revenue-fund].~~

10 SECTION 15. Section 11.085, Water Code, is amended by adding
11 Subsection (w) to read as follows:

12 (w) The requirements of this section apply to the transfer
13 of water from one river basin to another regardless of whether all
14 or any part of the water right, permit, certified filing, or
15 certificate of adjudication under which the water is authorized to
16 be used is also transferred.

17 SECTION 16. Subsection (a), Section 11.138, Water Code, is
18 amended to read as follows:

19 (a) The commission may issue temporary permits for
20 beneficial purposes to the extent that they do not interfere with
21 or adversely affect prior appropriations or vested rights on the
22 stream from which water is to be diverted under such temporary
23 permit. The commission may, by appropriate order, authorize any
24 member of the commission to approve and issue temporary permits
25 without notice and hearing if it appears to such issuing party that
26 sufficient water is available at the proposed point of diversion to

1 satisfy the requirements of the temporary permit as well as all
 2 existing rights. No temporary permit issued without notice and
 3 hearing shall authorize more than 10 acre-feet of water, nor may it
 4 be for a term in excess of one year. The commission by rule may
 5 authorize the beneficial use, without a permit, of not more than 25
 6 acre-feet of water, for a term not to exceed one year, if the
 7 diversion of water will not affect existing water right holders and
 8 the user of the water registers the use with the commission in the
 9 manner required by the commission.

10 SECTION 17. Section 11.139, Water Code, is amended to read
 11 as follows:

12 Sec. 11.139. EMERGENCY AUTHORIZATIONS. [{a}] Except as
 13 provided by Section 5.506 [~~11-148~~] of this code, the commission may
 14 grant an emergency permit, order, or amendment to an existing
 15 permit, certified filing, or certificate of adjudication under
 16 Subchapter L, Chapter 5 [~~after--notice--to--the--governor--for--an~~
 17 ~~initial--period--of--not--more--than--120--days--if--the--commission--finds~~
 18 ~~that--emergency--conditions--exist--which--present--an--imminent--threat--to~~
 19 ~~the--public--health--and--safety--and--which--override--the--necessity--to~~
 20 ~~comply--with--established--statutory--procedures--and--there--are--no~~
 21 ~~feasible--practicable--alternatives--to--the--emergency--authorization--~~
 22 ~~Such--emergency--action--may--be--renewed--once--for--not--longer--than--60~~
 23 ~~days~~].

24 [{b}]--A person desiring to obtain an emergency--authorization
 25 under---this--section--shall--submit--to--the--commission--a--sworn
 26 application--containing--the--following--information:

1 [(1) -- a description of the condition of emergency
2 justifying the granting of the emergency authorization;

3 [(2) -- a statement setting forth facts which support the
4 findings required under this section;

5 [(3) -- an estimate of the dates on which the proposed
6 authorization should begin and end;

7 [(4) -- a description of the action sought and the
8 activity proposed to be allowed, mandated, or prohibited; and

9 [(5) -- any other statements or information required by
10 the commission.

11 [(c) -- If the commission finds the applicant's statement made
12 under Subsection (b) of this section to be correct, the commission
13 may grant emergency authorizations under this section without
14 notice and hearing or with such notice and hearing as the
15 commission considers practicable under the circumstances.

16 [(d) -- If the commission grants an emergency authorization
17 under this section without a hearing, the authorization shall fix a
18 time and place for a hearing to be held before the commission. The
19 hearing shall be held as soon after the emergency authorization is
20 granted as is practicable but not later than 20 days after the
21 emergency authorization is granted.

22 [(e) -- At the hearing, the commission shall affirm, modify, or
23 set aside the emergency authorization. Any hearing on an emergency
24 authorization shall be conducted in accordance with Chapter 2001,
25 Government Code, and rules of the commission.

26 [(f) -- If an imminent threat to the public health and safety

1 exists-which-requires-emergency-action-before--the--commission--can
 2 take--action--as--provided--by--Subsections-(a)-through-(c)-of-this
 3 section-and-there--are--no--feasible--alternatives,--the--executive
 4 director--may--grant-an-emergency-authorization-after-notice-to-the
 5 governor.---If--the--executive---director---issues---an---emergency
 6 authorization--under--this--subsection, the-commission-shall--hold-a
 7 hearing-as-provided-for-in-Subsections-(d)-and-(e)-of-this-section.
 8 The-requirements--of--Subsection--(b)--of--this--section--shall--be
 9 satisfied--by-the-applicant-before-action-is-taken-by-the-executive
 10 director-on-the-request-for-emergency-authorization.

11 [(g)--The--requirements--of--Section--11.132--of--this---code
 12 relating--to--the--time-for-notice, newspaper-notice, and-method-of
 13 giving-a-person-notice-do--not--apply--to--a--hearing--held--on--an
 14 application--for-an-emergency-authorization-under-this-section, but
 15 such--general--notice--of--the--hearing--shall--be--given--as---the
 16 commission,---under--Subsections--(c)--and--(e)--of--this--section,
 17 considers-practicable-under-the-circumstances.

18 [(h)--The-commission-may--grant--an--emergency--authorization
 19 under--this--section--for--the-temporary-transfer-and-use-of-all-or
 20 part-of-a-permit, certified-filing, or-certificate-of--adjudication
 21 for--other--than-domestic-or-municipal-use-to-a-retail-or-wholesale
 22 water-supplier-for-public-health-and-safety-purposes.---In--addition
 23 to--the--requirements--contained-in-Subsection-(b)-of-this-section,
 24 the-commission-may-direct-that-the-applicant-will--timely--pay--the
 25 amounts--for--which--the--applicant-may-be-potentially-liable-under
 26 Subsection-(j)-of-this-section-and-to-the-extent-authorized-by--law

1 will--fully--indemnify--and--hold-harmless-the-state,-the-executive
2 director,-and-the-commission-from-any-and--all--liability--for--the
3 authorization--sought,---The--commission--may--order--bond-or-other
4 surety-in-a-form-acceptable-to-the-commission-as--a--condition--for
5 such--emergency--authorization,---The--commission--may-not-grant-an
6 emergency-authorization-under-this--section--which--would--cause--a
7 violation-of-a-federal-regulation-

8 [(i) --In--transferring--the--amount-of-water-requested-by-the
9 applicant,-the-executive-director-or-the-commission-shall--allocate
10 the--requested-amount-among-two-or-more-permits,-certified-filings,
11 or--certificates--of--adjudication--for--other--than--domestic--or
12 municipal-use-

13 [(j) --The--person--granted--an--emergency-authorization-under
14 Subsection-(h)-of-this-section-is--liable--to--the--owner--and--the
15 owner's--agent--or--lessee-from-whom-the-use-is-transferred-for-the
16 fair-market-value-of-the-water--transferred--as--well--as--for--any
17 damages--caused--by-the-transfer-of-use,---If,-within-60-days-of-the
18 termination-of-the-authorization,-the-parties-do-not-agree--on--the
19 amount-due,-or-if-full-payment-is-not-made,-either-party-may-file-a
20 complaint--with--the--commission--to-determine-the-amount-due,---The
21 commission-may-use-dispute-resolution-procedures--for--a--complaint
22 filed--under--this-subsection,---After-exhausting-all-administrative
23 remedies-under-this-subsection,-an--owner--from--whom--the--use--is
24 transferred-may-file-suit-to-recover-or-determine-the-amount-due-in
25 a--district--court-in-the-county-where-the-owner-resides-or-has-its
26 headquarters,---The-prevailing-party-in--a--suit--filed--under--this

1 subsection--is--entitled--to--recover--court--costs--and--reasonable
2 attorney's-fees-

3 [~~(k)~~--The-commission-may-prescribe-rules-and-adopt-fees-which
4 are-necessary-to-carry-out-the-provisions-of-this-section-

5 [~~(l)~~--An-emergency-authorization-does-not-vest-in-the-grantee
6 any-right-to-the-diversion,-impoundment,-or-use-of-water-and--shall
7 expire-and-be-cancelled-in-accordance-with-its-terms-]

8 SECTION 18. Subsection (a), Section 11.142, Water Code, is
9 amended to read as follows:

10 (a) Without obtaining a permit, a person may construct on
11 his own property a dam or reservoir with normal storage of not more
12 than 200 acre-feet of water for domestic and livestock purposes.
13 Normal storage may involve the temporary storage of greater than
14 200 acre-feet if the owner of the structure maintains records which
15 can demonstrate that throughout a 12-month period an average of not
16 more than 200 acre-feet of water is impounded in such a structure.

17 SECTION 19. Subsection (b), Section 11.173, Water Code, is
18 amended to read as follows:

19 (b) A permit, certified filing, or certificate of
20 adjudication or a portion of a permit, certified filing, or
21 certificate of adjudication is exempt from cancellation under
22 Subsection (a) of this section:

23 (1) to the extent of the owner's participation in the
24 Conservation Reserve Program authorized by the Food Security Act,
25 Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985)
26 or a similar governmental program; [or]

1 (2) if any portion of the water authorized to be used
2 pursuant to a permit, certified filing, or certificate of
3 adjudication has been used in accordance with a regional water plan
4 approved pursuant to Section 16.053 of this code;

5 (3) if the permit, certified filing, or certificate of
6 adjudication was obtained to meet demonstrated long-term public
7 water supply or electric generation needs as evidenced by a water
8 management plan developed by the holder and consistent with
9 projections of future water needs contained in the state water
10 plan; or

11 (4) if the permit, certified filing, or certificate of
12 adjudication was obtained as the result of the construction of a
13 reservoir funded, in whole or in part, by the holder of the permit,
14 certified filing, or certificate of adjudication as part of the
15 holder's long-term water planning.

16 SECTION 20. Subsection (b), Section 11.177, Water Code, is
17 amended to read as follows:

18 (b) In determining what constitutes reasonable diligence or
19 a justified nonuse as used in Subsection (a)(2) of this section,
20 the commission shall give consideration to:

21 (1) whether sufficient water is available in the
22 source of supply to meet all or part of the appropriation during
23 the 10-year period of nonuse;

24 (2) whether the nonuse is justified by the holder's
25 participation in the federal Conservation Reserve Program or a
26 similar governmental program as provided by Section 11.173(b)(1) of

1 this code;

2 (3) [~~whether the permit, certified filing, or~~
3 ~~certificate of adjudication was obtained to meet demonstrated~~
4 ~~long-term public water supply or electric generation needs as~~
5 ~~evidenced by a water management plan developed by the holder and~~
6 ~~consistent with projections of future water needs contained in the~~
7 ~~state water plan,~~

8 [~~4~~] ~~whether the permit, certified filing, or~~
9 ~~certificate of adjudication was obtained as the result of the~~
10 ~~construction of a reservoir funded, in whole or in part, by the~~
11 ~~holder of the permit, certified filing, or certificate of~~
12 ~~adjudication as part of the holder's long-term water planning,~~

13 [(5)] whether the existing or proposed authorized
14 purpose and place of use are consistent with an approved regional
15 water plan as provided by Section 16.053 of this code;

16 (4) [(6)] whether the permit, certified filing, or
17 certificate of adjudication has been deposited into the Texas Water
18 Bank as provided by Sections 15.7031 and 15.704 of this code or
19 whether it can be shown that the water right or water available
20 under the right is currently being made available for purchase
21 through private marketing efforts; or

22 (5) [(7)] whether the permit, certified filing, or
23 certificate of adjudication has been reserved to provide for
24 instream flows or bay and estuary inflows.

25 SECTION 21. Subsections (c), (d), (e), and (f), Section
26 12.052, Water Code, are amended to read as follows:

(c) The [~~if--the~~] owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section may not wilfully fail [~~fails~~] or refuse [~~refuses~~] to comply within the 30-day period following the date of the commission's final, nonappealable order to do so and may not [~~or--if--a--person~~] wilfully fail [~~fails~~] to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order[~~,--he--is--liable--to--a~~ ~~penalty--of--not--more--than--\$5,000--a--day--for--each--day--he--continues--to~~ ~~violate--this--section.--The--state--may--recover--the--penalty--by--suit~~ ~~brought--for--that--purpose--in--the--district--court--of--Travis--County~~].

(d) The commission may issue an emergency works safety order under Section 5.519. [~~if--the--commission--determines--that--the~~ ~~existing--condition--of--the--dam--is--creating--or--will--cause--extensive~~ ~~or--severe--property--damage--or--economic--loss--to--others--or--is--posing~~ ~~an--immediate--and--serious--threat--to--human--life--or--health--and--that~~ ~~other--procedures--available--to--the--commission--to--remedy--or--prevent~~ ~~the--occurrence--of--the--situation--will--result--in--unreasonable--delay,~~ ~~the--commission--may--issue--an--emergency--order,~~ ~~either--mandatory--or~~ ~~prohibitory--in--nature,~~ ~~directing--the--owner--of--a--dam--to--repair,~~ ~~modify,~~ ~~maintain,~~ ~~dewater,~~ ~~or--remove--the--dam--which--the--commission~~ ~~determines--is--unsafe.--The--emergency--order--may--be--issued--without~~ ~~notice--to--the--dam--owner--or--with--notice--the--commission--considers~~ ~~practicable--under--the--circumstances.--The--notice--does--not--have--to~~ ~~comply--with--Chapter--2001,--Government--Code.~~]

(e) [~~If--the--commission--issues--an--emergency--order--under authority--of--this--section--without--notice--to--the--dam--owner,--the commission--shall--fix--a--time--and--place--for--a--hearing--which--shall--be held--as--soon--as--practicable--to--affirm,--modify,--or--set--aside--the emergency--order,---The--notice--does--not--have--to--comply--with--Chapter 2001,--Government--Code,---If--the--nature--of--the--commission's--action requires--further--proceedings,--those--proceedings--shall--be--conducted as--appropriate--under--the--Administrative--Procedure--and---Texas Register--Act,--as--amended--(Article-6252-13a,--Vernon's--Texas--Civil Statutes).~~]

[~~f~~] Nothing in this section or in rules or orders made by the commission shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

SECTION 22. Chapter 7, Water Code, is amended by adding Subchapter I, and Sections 13.412, 13.4131, and 13.4132, Water Code, are transferred to Subchapter I, Chapter 7, Water Code, redesignated as Sections 7.402, 7.403, and 7.404, and amended to read as follows:

SUBCHAPTER I. RECEIVERSHIP; SUPERVISION OF CERTAIN UTILITIES

Sec. 7.401. DEFINITIONS. In this subchapter, "affiliated interest" and "affiliate" have the meanings assigned by Section 13.002.

Sec. 7.402 [~~13.412~~]. RECEIVERSHIP. (a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the

1 business of a water or sewer utility that:

2 (1) has abandoned operation of its facilities;

3 (2) informs the commission that the owner is
4 abandoning the system;

5 (3) violates a final order of the commission; or

6 (4) allows any property owned or controlled by it to
7 be used in violation of a final order of the commission.

8 (b) The court shall appoint a receiver if an appointment is
9 necessary:

10 (1) to guarantee the collection of assessments, fees,
11 penalties, or interest;

12 (2) to guarantee continuous and adequate service to
13 the customers of the utility; or

14 (3) to prevent continued or repeated violation of the
15 final order.

16 (c) The receiver shall execute a bond to assure the proper
17 performance of the receiver's duties in an amount to be set by the
18 court.

19 (d) After appointment and execution of bond, the receiver
20 shall take possession of the assets of the utility specified by the
21 court. Until discharged by the court, the receiver shall perform
22 the duties that the court directs to preserve the assets and carry
23 on the business of the utility and shall strictly observe the final
24 order involved.

25 (e) On a showing of good cause by the utility, the court may
26 dissolve the receivership and order the assets and control of the

1 business returned to the utility.

2 (f) For purposes of this section and Section 7.404
3 [~~13-4132~~], abandonment may include but is not limited to:

4 (1) failure to pay a bill or obligation owed to a
5 retail public utility or to an electric or gas utility with the
6 result that the utility service provider has issued a notice of
7 discontinuance of necessary services;

8 (2) failure to provide appropriate water or wastewater
9 treatment so that a potential health hazard results;

10 (3) failure to adequately maintain facilities,
11 resulting in potential health hazards, extended outages, or
12 repeated service interruptions;

13 (4) failure to provide customers adequate notice of a
14 health hazard or potential health hazard;

15 (5) failure to secure an alternative available water
16 supply during an outage;

17 (6) displaying a pattern of hostility toward or
18 repeatedly failing to respond to the commission or the utility's
19 customers; and

20 (7) failure to provide the commission with adequate
21 information on how to contact the utility for normal business and
22 emergency purposes.

23 (g) Notwithstanding Section 64.021, Civil Practice and
24 Remedies Code, a receiver appointed under this section may seek
25 commission approval to acquire the water or sewer utility's
26 facilities and transfer the utility's certificate of convenience

and necessity. The receiver must apply in accordance with Subchapter H, Chapter 13.

Sec. 7.403 [~~13-4131~~]. SUPERVISION OF CERTAIN UTILITIES.

(a) The commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with Chapter 13 [~~this-chapter~~] or commission rules, or noncompliance with commission orders.

(b) While supervising a utility, the commission may require the utility to:

(1) meet [~~abide---~~] conditions and requirements prescribed by the commission, including:

(A) [~~1~~] management requirements;

(B) [~~2~~] additional reporting requirements;

(C) [~~3~~] restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and

(D) [~~4~~] a requirement that the utility place the utility's funds into an account in a financial institution approved by the commission and use of those funds shall be restricted to reasonable and necessary utility expenses; and[-]

(2) [~~(c)--While-supervising-a-utility,--the--commission may--require--that--the--utility~~] obtain commission approval before taking an [~~any~~] action [~~that-may-be~~] restricted under Subdivision (1) [~~Subsection-(b)~~] of this section.

(C) An [~~Any~~] action or transaction for which commission

1 approval is required by this section that [which] occurs without
2 commission approval may be voided by the commission.

3 Sec. 7.404 [~~13-4132~~]. OPERATION OF UTILITY THAT DISCONTINUES
4 OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. (a) The
5 commission, after providing to the utility notice and an
6 opportunity to be heard by the commissioners at a commission
7 meeting, may authorize a willing person to temporarily manage and
8 operate a utility if the utility:

9 (1) has discontinued or abandoned operations or the
10 provision of services; or

11 (2) has been or is being referred to the attorney
12 general for the appointment of a receiver under Section 7.402
13 [~~13-412~~].

14 (b) The commission may appoint a person under this section
15 by emergency order under Section 5.507 and may authorize an
16 emergency rate increase by emergency order under Section 5.508[~~7~~
17 ~~and--notice--of--the--action-is-adequate-if-the-notice-is-mailed-or~~
18 ~~hand-delivered--to--the--last--known--address--of---the---utility's~~
19 ~~headquarters~~].

20 (c) A person appointed under this section has the powers and
21 duties necessary to ensure the continued operation of the utility
22 and the provision of continuous and adequate services to customers,
23 including the power and duty to:

24 (1) read meters;

25 (2) bill for utility services;

26 (3) collect revenues;

- (4) disburse funds;
- (5) access all system components; and
- (6) request rate increases.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

SECTION 23. Section 13.414, Water Code, is amended to read as follows:

Sec. 13.414. VIOLATION BY [~~PENALTY--AGAINST~~] RETAIL PUBLIC UTILITY OR AFFILIATED INTEREST. A [~~(a)--Any~~] retail public utility or affiliated interest may not violate [~~that--violates~~] this chapter, fail [~~fails~~] to perform a duty imposed on it, or fail, neglect, [~~fails,--neglects,~~] or refuse [~~refuses~~] to obey an order, rule, direction, or requirement of the commission or decree or judgment of a court [~~is-subject-to-a-civil-penalty-of-not-less-than \$100-nor-more-than-\$5,000-for-each-violation~~].

[~~(b)--A--retail-public-utility-or-affiliated-interest-commits a-separate-violation-each-day-it-continues--to--violate--Subsection (a)-of-this-section-~~

[~~(c)--The--attorney--general--shall-institute-suit-on-his-own initiative-or-at-the-request-of,-in-the-name-of,-and-on--behalf--of the--commission-in-a-court-of-competent-jurisdiction-to-recover-the penalty-under-this-section-~~]

SECTION 24. Subsections (b), (c), and (d), Section 35.008, Water Code, are amended to read as follows:

(b) The commission shall call a public comment [an

1 ~~evidentiary~~] hearing to consider:

2 (1) the designation of a priority groundwater
3 management area;

4 (2) whether a district should be created over all or
5 part of a priority groundwater management area; or

6 (3) whether all or part of the land in the priority
7 groundwater management area should be added to an existing
8 district.

9 (c) Public comment [~~Evidentiary~~] hearings shall be held at a
10 location in one of the counties in which the priority groundwater
11 management area is located, or proposed to be located, or in the
12 nearest convenient location if adequate facilities are not
13 available in those counties.

14 (d) At the public comment hearing, the commission shall hear
15 testimony and receive evidence from affected persons. The
16 commission shall consider the executive director's report and
17 supporting information and the testimony and evidence received at
18 the public comment hearing. If the commission considers further
19 information necessary, the commission may request such information
20 from any source.

21 SECTION 25. Section 35.009, Water Code, is amended to read
22 as follows:

23 Sec. 35.009. NOTICE AND PUBLIC COMMENT HEARING. (a) The
24 commission shall have notice of the public comment hearing
25 published in at least one newspaper with general circulation in the
26 county or counties in which the area proposed for designation as a

1 priority groundwater management area or the area within a priority
2 groundwater management area being considered for district creation
3 or for addition to an existing district is located. Notice must be
4 published not later than the 30th day before the date set for the
5 commission to consider the designation of the priority groundwater
6 management area, the creation of a district in a priority
7 groundwater management area, or the addition of land in a priority
8 groundwater management area to an existing district.

9 (b) The notice must include:

10 (1) if applicable, a statement of the general purpose
11 and effect of designating the proposed priority groundwater
12 management area;

13 (2) if applicable, a statement of the general purpose
14 and effect of creating a district in the priority groundwater
15 management area;

16 (3) if applicable, a statement of the general purpose
17 and effect of adding all or part of the land in the priority
18 groundwater management area to an existing district;

19 (4) a map generally outlining the boundaries of the
20 area being considered for priority groundwater management area
21 designation or the priority groundwater management area being
22 considered for district creation or for addition to an existing
23 district, or notice of the location at which a copy of the map may
24 be examined or obtained;

25 (5) a statement that the executive director's report
26 concerning the priority groundwater management area or proposed

1 area is available at the commission's main office in Austin, Texas,
2 and at regional offices of the commission for regions which include
3 territory within the priority groundwater management area or
4 proposed priority groundwater management area and that the report
5 is available for inspection during regular business hours;

6 (6) a description or the name of the locations in the
7 affected area at which the commission has provided copies of the
8 executive director's report to be made available for public
9 inspection;

10 (7) the name and address of each public library, each
11 county clerk's office, and each district to which the commission
12 has provided copies of the executive director's report; and

13 (8) the date, time, and place of the public comment
14 hearing.

15 (c) The commission shall also give written notice of the
16 date, time, place, and purpose of the public comment hearing to the
17 governing body of each county, regional water planning group,
18 adjacent groundwater district, municipality, river authority, water
19 district, or other entity which supplies public drinking water,
20 including each holder of a certificate of convenience and necessity
21 issued by the commission, and of each irrigation district, located
22 either in whole or in part in the priority groundwater management
23 area or proposed priority groundwater management area. The notice
24 must be given before the 30th day preceding the date set for the
25 public comment hearing.

26 SECTION 26. Subsection (a), Section 35.012, Water Code, is

1 amended to read as follows:

2 (a) At the conclusion of its public comment hearing and
3 considerations, the commission shall issue an order stating its
4 findings and conclusions.

5 SECTION 27. Chapter 35, Water Code, is amended by adding
6 Section 35.010 to read as follows:

7 Sec. 35.010. CREATION OF DISTRICTS ON PETITION AFTER
8 DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA. The
9 commission may not consider the creation of a groundwater
10 conservation district in a designated priority groundwater
11 management area before the conclusion of the next regular session
12 of the Texas Legislature following the designation unless the local
13 landowners have initiated a petition process under Chapter 36 for
14 the creation of a groundwater conservation district with a priority
15 groundwater management area.

16 SECTION 28. Section 35.012, Water Code, is amended by adding
17 new Subsections (c) and (d), relettering existing Subsections (c),
18 (d), (e), and (f) as Subsections (e), (f), (g), and (h), and
19 amending existing Subsection (d) to read as follows:

20 (c) Not later than the 10th day after the date on which the
21 commission order designating a priority groundwater management area
22 is issued, the commission shall send written notice of the
23 commission's actions to each landowner in the designated priority
24 groundwater management area at the landowner's most recent known
25 address as shown in the tax rolls of the county in which the land
26 is located. The notice must include the commission's findings and

1 conclusions from the data and information considered in designating
 2 the priority groundwater management area and the commission's
 3 recommendation regarding the need for a groundwater conservation
 4 district in the priority groundwater management area.

5 (d) As soon as possible after a commission order designating
 6 a priority groundwater management area, the Texas Agricultural
 7 Extension Service shall begin an educational program within the
 8 area with the assistance and cooperation of the Texas Water
 9 Development Board, the commission, the Department of Agriculture,
 10 other state agencies, and existing districts to inform the
 11 residents of the status of the area's water resources and
 12 management options including possible formation of a district.

13 (e) Following the issuance of a commission order under
 14 Subsection (b), the landowners in the priority groundwater
 15 management area may:

16 (1) create one or more districts under Subchapter B,
 17 Chapter 36;

18 (2) have the area annexed to a district that adjoins
 19 the area; or

20 (3) create one or more districts through the
 21 legislative process.

22 (f) [†d] The commission shall identify the areas subject to
 23 the order of the commission issued under Subsection (b) that have
 24 not been incorporated into a district and shall delineate proposed
 25 boundaries of a district to include those areas. [†f---the
 26 commission--proposes--the--creation--of--one-or-more-districts,--the

1 Texas-Agricultural-Extension-Service--shall--begin--an--educational
2 program--within--such--areas-with-the-assistance-and-cooperation-of
3 the-Texas-Water-Development--Board,--the--commission,--other--state
4 agencies,--and--existing--districts--to-inform-the-residents-of-the
5 status--of--the--area's--water--resources--and--management--options
6 including-possible-formation-of-a-district,--before--beginning--the
7 procedures--for--creation--of--a-district-provided-in-Subchapter-B,
8 Chapter-36.]

9 (g) [(e)] If the commission fails to find that the district
10 would be a benefit to the land and other property within the
11 priority groundwater management area, that there is a public need
12 for the district, or that creation of the district will further the
13 public welfare, the commission shall issue an order stating that a
14 district should not be created within the boundaries of the
15 priority groundwater management area.

16 (h) [(f)] An order of the commission issued under this
17 section may not be appealed.

18 SECTION 29. Section 36.014, Water Code, is amended to read
19 as follows:

20 Sec. 36.014. NOTICE AND HEARING ON DISTRICT CREATION.
21 [(a)] If a petition is filed under Section 36.013 or the
22 commission proposes that a district be created under Section
23 35.012(b), the commission shall give notice of the [an] application
24 or proposal as required by Section 49.011(a) and may conduct a
25 hearing on the application or proposal if the commission determines
26 that a hearing is necessary under Section 49.011.

1 ~~[(b)--If---the--petition--contains--a--request--to--create--a~~
2 ~~management-area-in-all-or-part-of-the-proposed-district, the notice~~
3 ~~must-also-be-given-in-accordance-with-the-requirements--in--Section~~
4 ~~35-006-for-the-designation-of-management-areas.]~~

5 SECTION 30. Section 36.015, Water Code, is amended to read
6 as follows:

7 Sec. 36.015. FINDINGS. (a) If the commission finds that a
8 district requested by petition or proposed by the commission is
9 feasible and practicable, ~~[that-it]~~ would be a benefit to the land
10 in the district, and ~~[that--it]~~ would be a public benefit or
11 utility, the commission shall issue an order containing these
12 findings granting the petition or adopting the proposal, as
13 appropriate.

14 (b) If the commission finds that a district is not feasible
15 and practicable, that it would not be a benefit to the land in the
16 district, that it would not be a public benefit or utility, or that
17 it is not needed, the commission by order shall deny the petition
18 or reject the proposal, as appropriate.

19 (c) The commission may adjust the boundaries of the proposed
20 district to exclude any land that would not be benefited by
21 inclusion in the district and is not necessary to the district for
22 proper regulation of the groundwater reservoir.

23 (d) If the commission grants the petition or adopts the
24 proposal to create the district, it shall direct in its order
25 creating the district that an election be called by the temporary
26 directors to confirm the creation of the district and to elect

1 permanent directors.

2 (e) ~~[The refusal to grant a petition to create a district~~
3 ~~does not invalidate or affect the designation of any management~~
4 ~~area requested in the same petition.]~~

5 [(f)] The commission shall act on the petition or its
6 proposal within a reasonable amount of time.

7 SECTION 31. Subchapter D, Chapter 36, Water Code, is amended
8 by adding Section 36.1074 to read as follows:

9 Sec. 36.1074. EXTENSION OF DISTRICT AUTHORITY TO ADDITIONAL
10 AQUIFERS WITHIN DISTRICT'S GEOGRAPHIC BOUNDARIES. (a) The
11 commission by rule shall establish a procedure by which a district
12 created by special law may petition to extend the district's
13 authority to include management of any aquifer within the
14 geographic boundaries of the district the management of which is
15 not provided for by the special law creating any district.

16 (b) Rules adopted by the commission under this section shall
17 establish grounds for a petition described by Subsection (a),
18 including:

19 (1) a change in pumping conditions;
20 (2) a change in water quality conditions;
21 (3) a finding that another aquifer is affecting water
22 levels in the primary managed aquifer; and

23 (4) other grounds the commission may specify.

24 (c) A petition under this section may be granted only by
25 order of the commission.

26 SECTION 32. Section 36.0151, Water Code, is amended to read

as follows:

Sec. 36.0151. NOTICE OF CREATION BY COMMISSION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA. [~~a~~]~~--if the commission proposes that a district be created under Section 35.012(d), it shall in its order creating the district provide that temporary directors be appointed under Section 36.016 and that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors.~~

[~~b~~] The commission shall notify the county commissioners court of each county with territory in the district of the district's creation as soon as practicable after issuing the order under Section 36.015(a) creating a [the] district proposed by the commission under Section 35.012(b).

SECTION 33. Section 36.108, Water Code, is amended to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA OR PRIORITY GROUNDWATER MANAGEMENT AREA. (a) If two or more districts are located within the boundaries of the same management area or priority groundwater management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. On completion of the plan, each district shall forward a copy of the new revised management plan to the other districts in the management area or priority groundwater management area.

(b) The board of directors of each district in the management area or priority groundwater management area may, by

1 resolution, call a joint meeting with the boards of directors of
2 the other districts in the management area or priority groundwater
3 management area to review the management plans and accomplishments
4 for the management area or priority groundwater management area.
5 The boards shall meet to consider the plans individually and shall
6 compare them to other management plans then in force in the
7 management area. In reviewing the management plans, the boards
8 shall consider:

9 (1) the goals of each management plan and its impact
10 on planning throughout the management area or priority groundwater
11 management area;

12 (2) the effectiveness of the measures established by
13 each management plan for conserving and protecting groundwater and
14 preventing waste, and the effectiveness of these measures in the
15 management area or priority groundwater management area generally;
16 and

17 (3) any other matters that the boards consider
18 relevant to the protection and conservation of groundwater and the
19 prevention of waste in the management area or priority groundwater
20 management area.

21 (c) A joint meeting of the boards of directors must be held
22 in accordance with the Open Meetings Act, Chapter 551, Government
23 Code. Notice of the meeting shall be given in accordance with the
24 requirements for notice of district board of directors meetings
25 under that Act. In addition, notice of the meeting shall be
26 published not later than the 30th day before the date of the

1 scheduled meeting in a newspaper with general circulation in each
2 county in the management area or priority groundwater management
3 area.

4 (d) A district in the management area or priority
5 groundwater management area may file a petition with the commission
6 requesting an inquiry if the petitioner district believes that:

7 (1) another district in the management area or
8 priority groundwater management area has failed to adopt rules;

9 (2) the groundwater in the management area or priority
10 groundwater management area is not adequately protected by the
11 rules adopted by another district; or

12 (3) the groundwater in the management area or priority
13 groundwater management area is not adequately protected due to the
14 failure of another district to enforce substantial compliance with
15 its rules.

16 (e) Not later than the 90th day after the date the petition
17 is filed, the commission shall review the petition and either:

18 (1) dismiss it if it finds that the evidence is not
19 adequate to show that any of the conditions alleged in the petition
20 exist; or

21 (2) select a review panel as provided in Subsection
22 (f).

23 (f) The commission may appoint a review panel consisting of
24 a chairman and four other members. A director or general manager
25 of a district located outside the management area or priority
26 groundwater management area that is the subject of the petition may

1 be appointed to the review panel. The commission may not appoint
 2 more than two members of the review panel from any one district.
 3 The commission also shall appoint a disinterested person to serve
 4 as a nonvoting recording secretary for the review panel. The
 5 recording secretary may be an employee of the commission. The
 6 recording secretary shall record and document the proceedings of
 7 the panel.

8 (g) Not later than the 120th day after appointment, the
 9 review panel shall review the petition and any evidence relevant to
 10 the petition and, in a public meeting, prepare a report to the
 11 commission. The commission may direct the review panel to conduct
 12 public hearings at a location in the management area or priority
 13 groundwater management area to take evidence on the petition. The
 14 review panel may attempt to negotiate a settlement or resolve the
 15 dispute by any lawful means.

16 (h) In its report, the review panel shall include:

17 (1) a summary of all evidence taken in any hearing on
 18 the petition;

19 (2) a list of findings and recommended actions
 20 appropriate for the commission to take and the reasons it finds
 21 those actions appropriate; and

22 (3) any other information the panel considers
 23 appropriate.

24 SECTION 34. Section 341.047, Health and Safety Code, is
 25 transferred to Subchapter E, Chapter 7, Water Code, redesignated as
 26 Section 7.1605, Water Code, and amended to read as follows:

1 Sec. 7.1605 [~~341-047~~]. VIOLATIONS RELATING TO PUBLIC
2 DRINKING WATER [~~CRIMINAL--PENALTY~~]. (a) A person commits an
3 offense if the person:

4 (1) violates a provision of Section 341.031, Health
5 and Safety Code;

6 (2) violates a provision of Section 341.032(a) or (b), Health and Safety Code;

7 (3) violates a provision of Section 341.033(a)-(f), Health and Safety Code;

8 (4) constructs a drinking water supply system without
9 submitting completed plans and specifications as required by
10 Section 341.035(c), Health and Safety Code;

11 (5) begins construction of a drinking water supply
12 system without the commission's approval as required by Section
13 341.035(a), Health and Safety Code;

14 (6) violates a provision of Section 341.0351 or
15 341.0352, Health and Safety Code;

16 (7) fails to remove a sign as required by Section
17 341.0354, Health and Safety Code; or

18 (8) violates a provision of Section 341.036, Health
19 and Safety Code.

20 (b) An offense under Subsection (a) is a Class C
21 misdemeanor.

22 (c) If it is shown on a trial of the defendant that the
23 defendant has been convicted of an offense under Subsection (a)
24 within a year before the date on which the offense being tried
25
26

1 occurred, the subsequent offense under Subsection (a) is a Class B
2 misdemeanor.

3 (d) Each day of a continuing violation is a separate
4 offense.

5 SECTION 35. Section 341.048, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 341.048. VIOLATION [CIVIL---ENFORCEMENT]. [{a}] A
8 person may not cause, suffer, allow, or permit a violation of this
9 subchapter or a rule or order adopted under this subchapter.

10 [{b}--A--person--who--causes,--suffers,--allows,--or--permits--a
11 violation--under--this--subchapter--shall--be--assessed--a--civil--penalty
12 of--not--less--than--\$50--nor--more--than--\$1,000--for--each--violation.--Each
13 day--of--a--continuing--violation--is--a--separate--violation.]

14 [{c}--If--it--appears--that--a--person--has--violated,--is--violating,
15 or--threatens--to--violate--a--provision--under--this--subchapter,--the
16 commission,--a--county,--or--a--municipality--may--institute--a--civil--suit
17 in--a--district--court--for:]

18 [{1}--injunctive--relief--to--restrain--the--person--from
19 continuing--the--violation--or--threat--of--violation,]

20 [{2}--the--assessment--and--recovery--of--a--civil--penalty,
21 or

22 [{3}--both--injunctive--relief--and--a--civil--penalty.]

23 [{d}--The--commission--is--a--necessary--and--indispensable--party
24 in--a--suit--brought--by--a--county--or--municipality--under--this--section.]

25 [{e}--On--the--commission's--request,--the--attorney--general--shall
26 institute--a--suit--in--the--name--of--the--state--for--injunctive--relief,--to

1 recover-a-civil-penalty,-or-for-both-injunctive--relief--and--civil
2 penalty-

3 [(f)--The-suit-may-be-brought-in-

4 [(1)--Travis-County,

5 [(2)--the-county-in-which-the-defendant-resides,-or

6 [(3)--the--county--in--which-the-violation-or-threat-of
7 violation-occurs-

8 [(g)--In-a-suit-under-this-section-to-enjoin-a--violation--or
9 threat--of--violation-of-this-subchapter,-the-court-shall-grant-the
10 state,-county,-or-municipality,-without-bond-or-other--undertaking,
11 any--injunction--that--the--facts--may--warrant-including-temporary
12 restraining-orders,-temporary-injunctions-after-notice-and-hearing,
13 and-permanent-injunctions-

14 [(h)--Civil-penalties-recovered-in-a-suit-brought-under--this
15 section--by--a--county--or--municipality--shall--be-equally-divided
16 between-

17 [(1)--the-state,-and

18 [(2)--the-county-or-municipality-that-first-brought-the
19 suit-]

20 SECTION 36. Section 5.507, Water Code, is amended to read as
21 follows:

22 Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
23 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
24 The commission may issue an emergency order appointing a willing
25 person to temporarily manage and operate a utility under Section
26 7.404 [13-4132]. Notice of the action is adequate if the notice is

1 mailed or hand delivered to the last known address of the utility's
2 headquarters.

3 SECTION 37. Subsection (a), Section 5.508, Water Code, is
4 amended to read as follows:

5 (a) Notwithstanding the requirements of Section 13.187, the
6 commission may authorize an emergency rate increase for a utility
7 for which a person has been appointed under Section 5.507 or 7.404
8 [~~13-412~~] or for which a receiver has been appointed under Section
9 7.402 [~~13-4132~~] if the increase is necessary to ensure the
10 provision of continuous and adequate services to the utility's
11 customers.

12 SECTION 38. Subsection (c), Section 341.0485, Health and
13 Safety Code, is amended to read as follows:

14 (c) The comptroller shall manage the account for the benefit
15 of the commission and shall invest the money and deposit interest
16 and other investment proceeds in the account. The comptroller
17 shall release money from the account in the manner provided by the
18 commission. Money in the account may be used only for:

19 (1) capital improvements to the water or sewer system
20 of a utility that has paid fines or penalties under this chapter or
21 under Chapter 13, Water Code, that have been deposited in the
22 account; or

23 (2) capital improvements and operating and maintenance
24 expenses for a utility placed in receivership or under a temporary
25 manager under Section 7.404 [~~13-4132~~], Water Code.

26 SECTION 39. (a) The following sections of the Water Code

are repealed:

- (1) Section 11.082;
- (2) Sections 11.0841 and 11.0842;
- (3) Section 11.148;
- (4) Section 13.411;
- (5) Section 13.4133;
- (6) Sections 13.4151 and 13.416;
- (7) Sections 13.417 and 13.418; and
- (8) Sections 35.004, 35.005, and 35.006.

(b) Sections 341.049 and 341.050, Health and Safety Code, are repealed.

SECTION 40. This Act takes effect September 1, 1999.

SECTION 41. (a) The changes in law made by this Act apply only to an offense committed or a violation or threat of violation that occurs on or after September 1, 1999. For purposes of this section an offense is committed and a violation or threat of violation occurs before September 1, 1999, if any element of the offense, violation, or threat of violation occurs before that date.

(b) An offense committed or a violation or threat of violation that occurred before September 1, 1999, is covered by the law in effect when the offense was committed or the violation or threat of violation occurred, and the former law is continued in effect for that purpose.

SECTION 42. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

S.B. No. 1311

1 constitutional rule requiring bills to be read on three several
2 days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

April 1, 1999

TO: Honorable J.E. "Buster" Brown, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB 1311 by Brown, J. E. "Buster" (relating to the development and management of water resources), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.
--

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Natural Resource Conservation Commission

LBB Staff: JK, DE, DM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable J.E. "Buster" Brown, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1311 by Brown, J. E. "Buster" (Relating to the development and management of water resources.), **As Introduced**

No significant fiscal implication to the State is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 360 State Office of Administrative Hearings, 555 Agricultural Extension Service Texas, 302 Office Of The Attorney General, 580 Water Development Board, 582 Natural Resource Conservation Commission, 304 Comptroller of Public Accounts

LBB Staff: JK, DE, DM

HOUSE COMMITTEE REPORT

1st Printing

By Brown
(Lewis of Orange)
Substitute the following for S.B. No. 1311:

S.B. No. 1311

By Lewis of Orange

C.S.S.B. No. 1311

A BILL TO BE ENTITLED

AN ACT

relating to the development and management of water resources and
the powers of the Texas Natural Resource Conservation Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.102(a), Water Code, is amended to read
as follows:

(a) The commission has the powers to perform any acts
whether specifically authorized by this code or other law or
necessarily implied by this code or other law, in order [necessary
~~and--convenient~~] to [the] exercise [of] its jurisdiction and powers
as provided by this code and other laws.

SECTION 2. Section 5.103, Water Code, is amended by adding
Subsection (d) to read as follows:

(d) In adopting a rule, the commission shall cite the
statute granting the specific regulatory authority to be exercised
under the proposed rule. Citation to this section or Section 5.013
does not fulfill the commission's obligation under this section.

SECTION 3. Section 5.504(a), Water Code, is amended to read
as follows:

(a) If the commission, the executive director, or the
executive director's representative issues an emergency order under
this subchapter without a hearing, the order shall set a time and
place for a hearing to affirm, modify, or set aside the emergency
order to be held before the commission or its designee as soon as

1 practicable after the order is issued. If the emergency order is
2 issued under Section 5.517 or 5.518, the order shall set a time for
3 the hearing not later than the 20th day after the date the
4 emergency order is issued.

5 SECTION 4. Section 5.507, Water Code, is amended to read as
6 follows:

7 Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
8 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
9 The commission may issue an emergency order appointing a willing
10 person to temporarily manage and operate a utility under Section
11 7.404 [~~13-4132~~]. Notice of the action is adequate if the notice is
12 mailed or hand delivered to the last known address of the utility's
13 headquarters.

14 SECTION 5. Section 5.508(a), Water Code, is amended to read
15 as follows:

16 (a) Notwithstanding the requirements of Section 13.187, the
17 commission may authorize an emergency rate increase for a utility
18 for which a person has been appointed under Section 5.507 or 7.404
19 [~~13-412~~] or for which a receiver has been appointed under Section
20 7.402 [~~13-4132~~] if the increase is necessary to ensure the
21 provision of continuous and adequate services to the utility's
22 customers.

23 SECTION 6. Subchapter L, Chapter 5, Water Code, is amended
24 by adding Sections 5.517, 5.518, 5.519, and 5.520 to read as
25 follows:

26 Sec. 5.517. EMERGENCY PERMIT TO DIVERT AND USE WATER;
27 AMENDMENT TO WATER RIGHT. (a) Except as provided by Section 5.506

1 and after notification to the governor, the commission by emergency
2 order may issue a permit to divert and use water or amend an
3 existing permit, certified filing, or certificate of adjudication
4 for an initial period not to exceed 120 days if the commission
5 finds that:

6 (1) emergency conditions exist that present an
7 imminent threat to the public health and safety and that override
8 the necessity to comply with established statutory procedures; and

9 (2) there is no feasible practicable alternative to
10 the emergency authorization. The emergency authorization may be
11 renewed once for a period not to exceed 60 days.

12 (b) The executive director may issue an emergency order if
13 an imminent threat to the public health and safety exists that
14 requires emergency action before the commission can take action
15 under Subsection (a) and there is no feasible alternative. If the
16 executive director issues an emergency order under this subsection,
17 the commission shall hold a hearing as provided for in Section
18 5.504 as soon as practicable but not later than 20 days after
19 issuance of the order to affirm, modify, or set aside the order.

20 (c) The notice requirements of Section 11.132 relating to
21 the time for notice, newspaper notice, and method of giving a
22 person notice do not apply to a hearing held on an application for
23 an emergency order under this section. The commission shall give
24 the general notice of the hearing that the commission considers
25 practicable under the circumstances.

26 (d) The commission may adopt rules and impose fees necessary
27 to carry out the provisions of this section.

1 (e) An emergency order under this section does not vest in
2 the grantee any right to the diversion, impoundment, or use of
3 water and expires by its terms.

4 Sec. 5.518. EMERGENCY ORDER FOR TEMPORARY TRANSFER OF USE OF
5 WATER RIGHT. (a) The commission by emergency order may grant the
6 temporary transfer and use of all or part of a surface water right
7 for a use other than domestic or municipal to a retail or wholesale
8 water supplier for public health and safety purposes.

9 (b) The commission may direct the applicant to timely pay
10 the amounts for which the applicant may be potentially liable under
11 this section and to fully indemnify and hold harmless the state,
12 the executive director, and the commission from any and all
13 liability for the order sought. The commission may order bond or
14 other surety in a form acceptable to the commission as a condition
15 for an emergency order under this section. The commission may not
16 grant an emergency authorization under this section that would
17 cause a violation of a federal regulation.

18 (c) In transferring the amount of water requested by the
19 applicant, the executive director or the commission shall allocate
20 the requested amount among two or more permits, certified filings,
21 or certificates of adjudication for a use other than domestic,
22 municipal, or electric generation.

23 (d) A person granted an emergency order under this section
24 is liable to the owner from whom the use is transferred for the
25 fair market value of the water transferred and for any damages
26 proximately caused by the transfer of use. If, within 60 days of
27 the termination of the order, the parties do not agree on the

1 amount due, or if full payment is not made, either party may file a
2 complaint with the commission to determine the amount due.

3 (e) The commission by rule shall establish a dispute
4 resolution procedure for a complaint filed under this section.
5 After exhausting all administrative remedies under this section, an
6 owner from whom the use is transferred may file suit to recover or
7 determine the amount due in a district court in the county where
8 the owner resides or has its headquarters. The prevailing party in
9 a suit filed under this subsection is entitled to recover court
10 costs and reasonable attorney's fees.

11 Sec. 5.519. EMERGENCY WORKS SAFETY ORDER. The commission
12 may issue a mandatory or prohibitory emergency order directing the
13 owner of a dam, levee, or other water-storage or flood-control work
14 to repair, modify, maintain, dewater, or remove a work if the
15 commission finds that:

16 (1) the existing condition of the work is causing or
17 will cause extensive or severe property damage or economic loss to
18 others or is posing an immediate and serious threat to human life
19 or health; and

20 (2) other procedures available to the commission to
21 remedy or prevent the occurrence will result in unreasonable delay.

22 Sec. 5.520. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
23 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
24 The commission may issue an emergency order appointing a willing
25 person to temporarily manage and operate a utility under Section
26 7.404. Notice of the action is adequate if the notice is mailed or
27 hand delivered to the last known address of the utility's

1 headquarters.

2 SECTION 7. Section 7.004, Water Code, is amended to read as
3 follows:

4 Sec. 7.004. REMEDIES CUMULATIVE. The remedies under this
5 chapter are cumulative of all other remedies. Nothing in this
6 chapter affects the right of a private corporation, [or]
7 individual, or political subdivision that has a justiciable
8 interest to pursue any available common law remedy to enforce a
9 right, to abate a condition of pollution or other nuisance, to
10 recover damages to enforce a right, or to prevent or seek redress
11 or compensation for the violation of a right or otherwise redress
12 an injury.

13 SECTION 8. Subchapter B, Chapter 7, Water Code, is amended
14 by adding Section 7.034 to read as follows:

15 Sec. 7.034. ATTORNEY'S FEES; COSTS. A district court may
16 award the costs of litigation, including reasonable attorney's fees
17 and expert costs, to any political subdivision of the state,
18 private corporation, or individual that is a water right holder and
19 that prevails in a suit for injunctive relief to redress an
20 unauthorized diversion, impoundment, or use of surface water in
21 violation of Chapter 11 or a rule adopted under Chapter 11.

22 SECTION 9. Section 7.051(b), Water Code, is amended to read
23 as follows:

24 (b) Except as provided by this subsection, this [This]
25 subchapter does not apply to violations of Chapter [117] 12 or[7
26 137] 16[7--or--36--of-this-code7-or-Chapter-3417-Health-and-Safety
27 Code]. This subchapter does apply to Section 16.236.

SECTION 10. Section 7.052, Water Code, is amended to read as follows:

Sec. 7.052. MAXIMUM PENALTY. (a) The amount of the penalty for a violation of Chapter 18, 32, 33, or 34 of this code or Chapter 366, 371, or 372, Health and Safety Code, may not exceed \$2,500 a day for each violation.

(b) The amount of the penalty for a violation of Chapter 11, a rule or order adopted under that chapter, or a permit, certified filing, or certificate of adjudication issued under that chapter may not exceed \$5,000 a day for each violation.

(c) The penalty for a violation of a rule or order adopted under Section 16.236 may not exceed \$1,000 a day for each violation.

(d) The amount of the penalty for a violation under Chapter 341, Health and Safety Code, may not be less than \$50 or more than \$1,000 for each violation.

(e) The amount of the penalty for all other violations within the jurisdiction of the commission to enforce may not exceed \$10,000 a day for each violation.

(f) [~~te~~] Each day that a continuing violation occurs may be considered a separate violation. The commission may authorize an installment payment schedule for an administrative penalty assessed under this subchapter, except for an administrative penalty assessed under Section 7.057 or assessed after a hearing under Section 7.058.

SECTION 11. Section 7.054, Water Code, is amended to read as follows:

1 Sec. 7.054. REPORT OF VIOLATION. (a) If, after examination
2 of a possible violation and the facts surrounding that possible
3 violation, the executive director concludes that a violation has
4 occurred, the executive director may issue a preliminary report in
5 accordance with commission rules that includes recommendations
6 regarding any penalty or corrective action.

7 (b) A report regarding a possible violation under Chapter 11
8 must state the facts on which the conclusion was based and
9 recommend the amount of any penalty. The executive director shall
10 base the recommended amount of the proposed penalty on the factors
11 provided by Section 7.053 and shall analyze each factor for the
12 benefit of the commission.

13 SECTION 12. Section 7.069, Water Code, is amended to read as
14 follows:

15 Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as provided
16 by Subsection (b), a [A] penalty collected under this subchapter
17 shall be deposited to the credit of the general revenue fund.

18 (b) A penalty collected under this subchapter from a public
19 utility shall be paid to the commission and deposited in the water
20 utility improvement account as provided by Section 341.0485, Health
21 and Safety Code.

22 SECTION 13. Subchapter C, Chapter 7, Water Code, is amended
23 by adding Section 7.076 to read as follows:

24 Sec. 7.076. COMPROMISE, MODIFICATION, OR REMISSION OF
25 CERTAIN PENALTIES. Notwithstanding any other provision to the
26 contrary, the commission may compromise, modify, or remit, with or
27 without condition, any penalty imposed under this subchapter for a

1 violation under Chapter 11.

2 SECTION 14. Section 7.102, Water Code, is amended to read as
3 follows:

4 Sec. 7.102. MAXIMUM PENALTY. (a) A person who causes,
5 suffers, allows, or permits a violation of a statute, rule, order,
6 or permit relating to Chapter 11, 18, 32, 33, or 34 of this code or
7 Chapter 366, 371, or 372, Health and Safety Code, shall be assessed
8 for each violation a civil penalty not less than \$50 nor greater
9 than \$5,000 for each day of each violation as the court or jury
10 considers proper.

11 (b) The amount of a penalty for a violation of a rule or
12 order issued by the commission under Section 12.052 may not exceed
13 \$5,000.

14 (c) A person who causes, suffers, allows, or permits a
15 violation of a statute, rule, order, or permit relating to Chapter
16 13 shall be assessed for each violation a civil penalty not less
17 than \$100 nor greater than \$5,000 for each day of each violation as
18 the court or jury considers proper.

19 (d) A person who causes, suffers, allows, or permits a
20 violation of a statute, rule, order, or permit relating to any
21 other matter within the commission's jurisdiction to enforce,
22 other than violations of Chapter [11] 12 or [7-13] 16[7-~~or~~-36] of
23 this code, or Chapter 341, Health and Safety Code, shall be
24 assessed for each violation a civil penalty not less than \$50 nor
25 greater than \$25,000 for each day of each violation as the court or
26 jury considers proper.

27 (e) Each day of a continuing violation is a separate

1 violation.

2 SECTION 15. Sections 7.105(a) and (c), Water Code, are
3 amended to read as follows:

4 (a) On the request of the executive director or the
5 commission, the attorney general shall institute a suit in the name
6 of the state for injunctive relief under Section 7.032, to recover
7 a civil penalty, or for both injunctive relief and a civil penalty.
8 The attorney general may initiate a suit for recovery of a penalty
9 under this section for a violation under Section 13.414.

10 (c) Except as provided by this subsection, the [The] suit
11 may be brought in Travis County, in the county in which the
12 defendant resides, or in the county in which the violation or
13 threat of violation occurs. A suit to recover a penalty for a
14 violation of a rule or order issued by the commission under Section
15 12.052 may be brought in Travis County.

16 SECTION 16. Subchapter D, Chapter 7, Water Code, is amended
17 by adding Section 7.1075 to read as follows:

18 Sec. 7.1075. DISPOSITION OF PENALTY COLLECTED FROM PUBLIC
19 UTILITY. A penalty collected under this subchapter from a public
20 utility shall be paid to the commission and deposited in the water
21 utility improvement account as provided by Section 341.0485, Health
22 and Safety Code.

23 SECTION 17. Subchapter D, Chapter 7, Water Code, is amended
24 by adding Section 7.112 to read as follows:

25 Sec. 7.112. LIMITATION ON SUIT FOR VIOLATION OF SECTION
26 11.081. An action to collect the penalty provided by Section 7.102
27 for a violation of Section 11.081 must be brought within two years

1 from the date of the alleged violation.

2 SECTION 18. Section 7.351, Water Code, is amended to read as
3 follows:

4 Sec. 7.351. CIVIL SUITS. If it appears that a violation or
5 threat of violation of Chapter 16, 26, 28, or 34 of this code or
6 Chapter 341, 361, 371, 372, or 382, Health and Safety Code, or a
7 provision of Chapter 401, Health and Safety Code, under the
8 commission's jurisdiction or a rule adopted or an order or a permit
9 issued under those chapters or provisions has occurred or is
10 occurring in the jurisdiction of a local government, the local
11 government or, in the case of a violation of Chapter 401, Health
12 and Safety Code, a person affected as defined in that chapter, may
13 institute a civil suit under Subchapter D in the same manner as the
14 commission in a district court by its own attorney for the
15 injunctive relief or civil penalty, or both, as authorized by this
16 chapter against the person who committed, is committing, or is
17 threatening to commit the violation.

18 SECTION 19. Section 11.0843(a), Water Code, is amended to
19 read as follows:

20 (a) Upon witnessing a violation of this chapter or a rule or
21 order or a water right issued under this chapter, a watermaster or
22 the watermaster's deputy, as defined by commission rule, may issue
23 the alleged violator a field citation alleging that a violation has
24 occurred and providing the alleged violator the option of either:

25 (1) without admitting to or denying the alleged
26 violation, paying an administrative penalty in accordance with the
27 predetermined penalty amount established under Subsection (b) [of

1 ~~this-section]~~ and taking remedial action as provided in the
2 citation; or

3 (2) requesting a hearing on the alleged violation in
4 accordance with Section 7.058 [~~11-0842-of-this-code~~].

5 SECTION 20. Section 11.085, Water Code, is amended by adding
6 Subsection (w) to read as follows:

7 (w) The requirements of this section apply to the transfer
8 of water from one river basin to another regardless of whether all
9 or any part of the water right, permit, certified filing, or
10 certificate of adjudication under which the water is authorized to
11 be used is also transferred.

12 SECTION 21. Section 11.134(c), Water Code, is amended to
13 read as follows:

14 (c) Beginning January 5, 2002 [~~September--17--2001~~], the
15 commission may not issue a water right for municipal purposes in a
16 region that does not have an approved regional water plan in
17 accordance with Section 16.053(i) [~~of--this--code~~] unless the
18 commission determines that conditions warrant waiver of this
19 requirement.

20 SECTION 22. Section 11.138(a), Water Code, is amended to
21 read as follows:

22 (a) The commission may issue temporary permits for
23 beneficial purposes to the extent that they do not interfere with
24 or adversely affect prior appropriations or vested rights on the
25 stream from which water is to be diverted under such temporary
26 permit. The commission may, by appropriate order, authorize any
27 member of the commission to approve and issue temporary permits

without notice and hearing if it appears to such issuing party that sufficient water is available at the proposed point of diversion to satisfy the requirements of the temporary permit as well as all existing rights. No temporary permit issued without notice and hearing shall authorize more than 10 acre-feet of water, nor may it be for a term in excess of one year. The commission by rule may authorize the beneficial use, without a permit, of not more than 25 acre-feet of water, for a term not to exceed one year, if the diversion of water will not affect existing water right holders and the user of the water registers the use with the commission in the manner required by the commission.

SECTION 23. Section 11.139, Water Code, is amended to read as follows:

Sec. 11.139. EMERGENCY AUTHORIZATIONS. ~~[(a)]~~ Except as provided by Section 5.506 ~~[11-148-of-this-code]~~, the commission may grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication under Subchapter L, Chapter 5 ~~[after--notice--to--the-governor-for-an initial-period-of-not-more-than-120-days-if--the--commission--finds that-emergency-conditions-exist-which-present-an-imminent-threat-to the--public--health--and-safety-and-which-override-the-necessity-to comply-with-established--statutory--procedures--and--there--are--no feasible--practicable--alternatives-to-the-emergency-authorization- Such-emergency-action-may-be-renewed-once-for-not--longer--than--60 days].~~

~~[(b)--A--person-desiring-to-obtain-an-emergency-authorization under--this--section--shall--submit--to--the--commission--a--sworn~~

1 application-containing-the-following-information:

2 [(1) -- a -- description -- of -- the -- condition -- of -- emergency
3 justifying-the-granting-of-the-emergency-authorization;

4 [(2) -- a -- statement -- setting -- forth -- facts -- which -- support -- the
5 findings-required-under-this-section;

6 [(3) -- an -- estimate -- of -- the -- dates -- on -- which -- the -- proposed
7 authorization-should-begin-and-end;

8 [(4) -- a -- description -- of -- the -- action -- sought -- and -- the
9 activity-proposed-to-be-allowed, mandated, or-prohibited; and

10 [(5) -- any -- other -- statements -- or -- information -- required -- by
11 the-commission;

12 [(c) -- If -- the -- commission -- finds -- the -- applicant's -- statement -- made
13 under-Subsection-(b)-of-this-section-to-be-correct, the -- commission
14 may -- grant -- emergency -- authorizations -- under -- this -- section -- without
15 notice -- and -- hearing -- or -- with -- such -- notice -- and -- hearing -- as -- the
16 commission-considers-practicable-under-the-circumstances.

17 [(d) -- If -- the -- commission -- grants -- an -- emergency -- authorization
18 under-this-section-without-a-hearing, the-authorization-shall-fix-a
19 time-and-place-for-a-hearing-to-be-held-before-the-commission. -- The
20 hearing -- shall -- be -- held -- as -- soon -- after -- the -- emergency -- authorization -- is
21 granted -- as -- is -- practicable -- but -- not -- later -- than -- 20 -- days -- after -- the
22 emergency-authorization-is-granted.

23 [(e) -- At -- the -- hearing, the-commission-shall-affirm, modify, or
24 set-aside-the-emergency-authorization. -- Any-hearing-on-an-emergency
25 authorization -- shall -- be -- conducted -- in -- accordance -- with -- Chapter -- 2001,
26 Government-Code, and-rules-of-the-commission.

27 [(f) -- If -- an -- imminent -- threat -- to -- the -- public -- health -- and -- safety

1 exists--which--requires--emergency-action-before-the-commission-can
 2 take-action-as-provided-by-Subsections-(a)---through--(c)--of--this
 3 section--and--there--are--no--feasible--alternatives, the-executive
 4 director-may-grant-an-emergency-authorization-after-notice--to--the
 5 governor.----If---the---executive---director--issues--an--emergency
 6 authorization-under-this-subsection, the-commission--shall--hold--a
 7 hearing-as-provided-for-in-Subsections-(d)-and-(e)-of-this-section.
 8 The--requirements--of--Subsection--(b)--of--this--section--shall-be
 9 satisfied-by-the-applicant-before-action-is-taken-by-the--executive
 10 director-on-the-request-for-emergency-authorization.

11 [(g)---The---requirements--of--Section--11.132--of--this--code
 12 relating-to-the-time-for-notice, newspaper-notice,--and--method--of
 13 giving--a--person--notice--do--not--apply--to--a-hearing-held-on-an
 14 application-for-an-emergency-authorization-under-this-section,--but
 15 such---general--notice--of--the--hearing--shall--be--given--as--the
 16 commission,--under--Subsections--(c)--and--(e)--of--this---section,
 17 considers-practicable-under-the-circumstances.

18 [(h)---The--commission--may--grant--an-emergency-authorization
 19 under-this-section-for-the-temporary-transfer-and--use--of--all--or
 20 part--of-a-permit, certified-filing, or-certificate-of-adjudication
 21 for-other-than-domestic-or-municipal-use-to-a-retail--or--wholesale
 22 water--supplier-for-public-health-and-safety-purposes.---In-addition
 23 to-the-requirements-contained-in-Subsection-(b)--of--this--section,
 24 the--commission--may--direct-that-the-applicant-will-timely-pay-the
 25 amounts-for-which-the-applicant-may-be--potentially--liable--under
 26 Subsection--(j)--of-this-section-and-to-the-extent-authorized-by-law
 27 will-fully-indemnify-and-hold-harmless--the--state,--the--executive

director,--and--the--commission--from--any--and--all--liability--for--the
authorization--sought.---The--commission--may--order--bond--or--other
surety--in--a--form--acceptable--to--the--commission--as--a--condition--for
such--emergency--authorization.---The--commission--may--not--grant--an
emergency--authorization--under--this--section--which--would--cause--a
violation--of--a--federal--regulation.

[(i)]--In--transferring--the--amount--of--water--requested--by--the
applicant,--the--executive--director--or--the--commission--shall--allocate
the--requested--amount--among--two--or--more--permits,--certified--filings,
or---certificates--of--adjudication--for--other--than--domestic--or
municipal--use.

[(j)]--The--person--granted--an--emergency--authorization--under
Subsection--(h)--of--this--section--is--liable--to--the--owner--and--the
owner's--agent--or--lessee--from--whom--the--use--is--transferred--for--the
fair--market--value--of--the--water--transferred--as--well--as--for--any
damages--caused--by--the--transfer--of--use.---If,--within--60--days--of--the
termination--of--the--authorization,--the--parties--do--not--agree--on--the
amount--due,--or--if--full--payment--is--not--made,--either--party--may--file--a
complaint--with--the--commission--to--determine--the--amount--due.---The
commission--may--use--dispute--resolution--procedures--for--a--complaint
filed--under--this--subsection.---After--exhausting--all--administrative
remedies--under--this--subsection,--an--owner--from--whom--the--use--is
transferred--may--file--suit--to--recover--or--determine--the--amount--due--in
a--district--court--in--the--county--where--the--owner--resides--or--has--its
headquarters.---The--prevailing--party--in--a--suit--filed--under--this
subsection--is--entitled--to--recover--court--costs--and--reasonable
attorney's--fees.

1 ~~[(k)--The commission may prescribe rules and adopt fees which~~
2 ~~are necessary to carry out the provisions of this section.~~

3 ~~[(l)--An emergency authorization does not vest in the grantee~~
4 ~~any right to the diversion, impoundment, or use of water and shall~~
5 ~~expire and be cancelled in accordance with its terms.]~~

6 SECTION 24. Section 11.142(a), Water Code, is amended to
7 read as follows:

8 (a) Without obtaining a permit, a person may construct on
9 the person's [his] own property a dam or reservoir with normal
10 storage of not more than 200 acre-feet of water for domestic and
11 livestock purposes. A person who temporarily stores more than 200
12 acre-feet of water in a dam or reservoir described by this
13 subsection is not required to obtain a permit for the dam or
14 reservoir if the person can demonstrate that the person has not
15 stored in the dam or reservoir more than 200 acre-feet of water on
16 average in any 12-month period.

17 SECTION 25. Section 11.146, Water Code, is amended by adding
18 Subsection (g) to read as follows:

19 (g) This section does not apply to a permit that
20 contemplates construction of a reservoir designed for the storage
21 of more than 75,000 acre-feet of water.

22 SECTION 26. Section 11.173(b), Water Code, is amended to
23 read as follows:

24 (b) A permit, certified filing, or certificate of
25 adjudication or a portion of a permit, certified filing, or
26 certificate of adjudication is exempt from cancellation under
27 Subsection (a) of this section:

1 (1) to the extent of the owner's participation in the
2 Conservation Reserve Program authorized by the Food Security Act,
3 Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985)
4 or a similar governmental program; [or]

5 (2) if any portion of the water authorized to be used
6 pursuant to a permit, certified filing, or certificate of
7 adjudication has been used in accordance with a regional water plan
8 approved pursuant to Section 16.053 of this code;

9 (3) if the permit, certified filing, or certificate of
10 adjudication was obtained to meet demonstrated long-term public
11 water supply or electric generation needs as evidenced by a water
12 management plan developed by the holder and consistent with
13 projections of future water needs contained in the state water
14 plan; or

15 (4) if the permit, certified filing, or certificate of
16 adjudication was obtained as the result of the construction of a
17 reservoir funded, in whole or in part, by the holder of the
18 permit, certified filing, or certificate of adjudication as part of
19 the holder's long-term water planning.

20 SECTION 27. Section 11.177(b), Water Code, is amended to
21 read as follows:

22 (b) In determining what constitutes reasonable diligence or
23 a justified nonuse as used in Subsection (a)(2) of this section,
24 the commission shall give consideration to:

25 (1) whether sufficient water is available in the
26 source of supply to meet all or part of the appropriation during
27 the 10-year period of nonuse;

1 (2) whether the nonuse is justified by the holder's
2 participation in the federal Conservation Reserve Program or a
3 similar governmental program as provided by Section 11.173(b)(1) of
4 this code;

5 (3) [~~whether--the---permit,---certified---filing,---or~~
6 ~~certificate--of--adjudication--was--obtained--to--meet--demonstrated~~
7 ~~long-term-public-water--supply--or--electric--generation--needs--as~~
8 ~~evidenced--by--a--water-management-plan-developed-by-the-holder-and~~
9 ~~consistent-with-projections-of-future-water-needs-contained-in--the~~
10 ~~state-water-plan;~~

11 [~~(4)--whether---the---permit,---certified---filing,---or~~
12 ~~certificate-of-adjudication-was--obtained--as--the--result--of--the~~
13 ~~construction--of--a--reservoir--funded,--in-whole-or-in-part,--by-the~~
14 ~~holder--of--the--permit,--certified--filing,--or---certificate---of~~
15 ~~adjudication-as-part-of-the-holder's-long-term-water-planning;~~

16 [~~(5)~~] whether the existing or proposed authorized
17 purpose and place of use are consistent with an approved regional
18 water plan as provided by Section 16.053 of this code;

19 (4) [~~(6)~~] whether the permit, certified filing, or
20 certificate of adjudication has been deposited into the Texas Water
21 Bank as provided by Sections 15.7031 and 15.704 of this code or
22 whether it can be shown that the water right or water available
23 under the right is currently being made available for purchase
24 through private marketing efforts; or

25 (5) [~~(7)~~] whether the permit, certified filing, or
26 certificate of adjudication has been reserved to provide for
27 instream flows or bay and estuary inflows.

SECTION 28. Sections 12.052(c), (d), (e), and (f), Water Code, are amended to read as follows:

(c) The [~~if--the~~] owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section may not wilfully fail [~~fails~~] or refuse [~~refuses~~] to comply within the 30-day period following the date of the commission's final, nonappealable order to do so and may not [~~or-if-a-person~~] wilfully fail [~~fails~~] to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order[~~7-he-is-liable-to-a-penalty-of-not-more-than-\$5,000-a-day-for-each-day-he-continues--to-violate--this--section.---The-state-may-recover-the-penalty-by-suit-brought-for-that-purpose-in-the-district-court-of-Travis-County~~].

(d) The commission may issue an emergency works safety order under Section 5.519 [~~if-the-commission-determines-that-the-existing-condition--of-the-dam-is-creating-or-will-cause-extensive-or-severe-property-damage--or--economic--loss--to--others--or--is--posing--an-immediate-and-serious-threat-to-human-life-or-health-and-that-other-procedures--available--to--the--commission-to-remedy-or-prevent-the-occurrence-of-the-situation-will-result-in-unreasonable-delay7--the-commission--may--issue--an--emergency--order7--either--mandatory-or-prohibitory-in-nature7-directing-the-owner--of--a--dam--to--repair7-modify7--maintain7--dewater7-or-remove-the-dam-which-the-commission-determines-is-unsafe7--The-emergency-order-may--be--issued--without-notice--to--the--dam--owner-or-with-notice-the-commission-considers-practicable-under-the-circumstances7--The-notice-does-not--have--to~~]

1 comply-with-Chapter-20017-Government-Code].

2 (e) [If--the--commission--issues--an--emergency--order-under
3 authority-of-this-section-without-notice--to--the--dam--owner,--the
4 commission--shall-fix-a-time-and-place-for-a-hearing-which-shall-be
5 held-as-soon-as-practicable-to-affirm,--modify,--or--set--aside--the
6 emergency--order.---The-notice-does-not-have-to-comply-with-Chapter
7 20017-Government-Code.---If-the-nature-of--the--commission's--action
8 requires--further-proceedings,--those-proceedings-shall-be-conducted
9 as--appropriate--under--the--Administrative--Procedure--and---Texas
10 Register--Act,--as--amended-(Article-6252-13a,--Vernon's-Texas-Civil
11 Statutes)-.

12 [f] Nothing in this section or in rules or orders made by
13 the commission shall be construed to relieve an owner or operator
14 of a dam or reservoir of the legal duties, obligations, or
15 liabilities incident to ownership or operation.

16 SECTION 29. Section 13.242(b), Water Code, is amended to
17 read as follows:

18 (b) A person that is not a retail public utility or a
19 utility or water supply corporation that is operating under
20 provisions pursuant to Subsection (c) may not construct facilities
21 to provide water or sewer service to more than one service
22 connection not on the property owned by the person and that are
23 within the certificated area of a retail public utility without
24 first obtaining written consent from the retail public utility. A
25 person that violates this section or the reasonable and legal terms
26 and conditions of any written consent is subject to the
27 administrative penalties described by Subchapter C, Chapter 7

1 ~~[Section-13.4151-of-this-code].~~

2 SECTION 30. Chapter 7, Water Code, is amended by adding
3 Subchapter I, and Sections 13.412, 13.4131, and 13.4132, Water
4 Code, are transferred to Subchapter I, Chapter 7, Water Code,
5 redesignated as Sections 7.402, 7.403, and 7.404, and amended to
6 read as follows:

7 SUBCHAPTER I. RECEIVERSHIP; SUPERVISION OF CERTAIN UTILITIES

8 Sec. 7.401. DEFINITION. In this subchapter, "affiliated
9 interest" and "affiliate" have the meanings assigned by Section
10 13.002.

11 Sec. 7.402 ~~[13.412]~~. RECEIVERSHIP. (a) At the request of
12 the commission, the attorney general shall bring suit for the
13 appointment of a receiver to collect the assets and carry on the
14 business of a water or sewer utility that:

- 15 (1) has abandoned operation of its facilities;
16 (2) informs the commission that the owner is
17 abandoning the system;
18 (3) violates a final order of the commission; or
19 (4) allows any property owned or controlled by it to
20 be used in violation of a final order of the commission.

21 (b) The court shall appoint a receiver if an appointment is
22 necessary:

- 23 (1) to guarantee the collection of assessments, fees,
24 penalties, or interest;
25 (2) to guarantee continuous and adequate service to
26 the customers of the utility; or
27 (3) to prevent continued or repeated violation of the

1 final order.

2 (c) The receiver shall execute a bond to assure the proper
3 performance of the receiver's duties in an amount to be set by the
4 court.

5 (d) After appointment and execution of bond, the receiver
6 shall take possession of the assets of the utility specified by the
7 court. Until discharged by the court, the receiver shall perform
8 the duties that the court directs to preserve the assets and carry
9 on the business of the utility and shall strictly observe the final
10 order involved.

11 (e) On a showing of good cause by the utility, the court may
12 dissolve the receivership and order the assets and control of the
13 business returned to the utility.

14 (f) For purposes of this section and Section 7.404
15 [~~13-4132~~], abandonment may include but is not limited to:

16 (1) failure to pay a bill or obligation owed to a
17 retail public utility or to an electric or gas utility with the
18 result that the utility service provider has issued a notice of
19 discontinuance of necessary services;

20 (2) failure to provide appropriate water or wastewater
21 treatment so that a potential health hazard results;

22 (3) failure to adequately maintain facilities,
23 resulting in potential health hazards, extended outages, or
24 repeated service interruptions;

25 (4) failure to provide customers adequate notice of a
26 health hazard or potential health hazard;

27 (5) failure to secure an alternative available water

1 supply during an outage;

2 (6) displaying a pattern of hostility toward or
3 repeatedly failing to respond to the commission or the utility's
4 customers; and

5 (7) failure to provide the commission with adequate
6 information on how to contact the utility for normal business and
7 emergency purposes.

8 (g) Notwithstanding Section 64.021, Civil Practice and
9 Remedies Code, a receiver appointed under this section may seek
10 commission approval to acquire the water or sewer utility's
11 facilities and transfer the utility's certificate of convenience
12 and necessity. The receiver must apply in accordance with
13 Subchapter H, Chapter 13.

14 Sec. 7.403 [~~13-4131~~]. SUPERVISION OF CERTAIN UTILITIES. (a)
15 The commission, after providing to the utility notice and an
16 opportunity for a hearing, may place a utility under supervision
17 for gross or continuing mismanagement, gross or continuing
18 noncompliance with Chapter 13 [~~this-chapter~~] or commission rules,
19 or noncompliance with commission orders.

20 (b) While supervising a utility, the commission may require
21 the utility to:

22 (1) meet [~~abide---~~by] conditions and requirements
23 prescribed by the commission, including:

- 24 (A) [~~1~~] management requirements;
25 (B) [~~2~~] additional reporting requirements;
26 (C) [~~3~~] restrictions on hiring, salary or
27 benefit increases, capital investment, borrowing, stock issuance or

dividend declarations, and liquidation of assets; and

(D) ~~[+4]~~ a requirement that the utility place the utility's funds into an account in a financial institution approved by the commission and use of those funds shall be restricted to reasonable and necessary utility expenses; and

(2) ~~[+--(c)--While---supervising---a---utility,---the commission-may-require-that-the-utility]~~ obtain commission approval before taking an [any] action ~~[that--may--be]~~ restricted under Subdivision (1) ~~[Subsection-(b)]~~ of this subsection ~~[section]~~.

(c) An [Any] action or transaction for which commission approval is required by this section that [which] occurs without commission approval may be voided by the commission.

Sec. 7.404 ~~[+3-4+32]~~. OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. (a) The commission, after providing to the utility notice and an opportunity to be heard by the commissioners at a commission meeting, may authorize a willing person to temporarily manage and operate a utility if the utility:

(1) has discontinued or abandoned operations or the provision of services; or

(2) has been or is being referred to the attorney general for the appointment of a receiver under Section 7.402 ~~[+3-4+2]~~.

(b) The commission may appoint a person under this section by emergency order under Section 5.507 and may authorize an emergency rate increase by emergency order under Section 5.508~~[7 and-notice-of-the-action-is-adequate-if-the--notice--is--mailed--or~~

1 hand-delivered---to---the---last---known---address---of---the---utility's
2 headquarters].

3 (c) A person appointed under this section has the powers and
4 duties necessary to ensure the continued operation of the utility
5 and the provision of continuous and adequate services to customers,
6 including the power and duty to:

- 7 (1) read meters;
8 (2) bill for utility services;
9 (3) collect revenues;
10 (4) disburse funds;
11 (5) access all system components; and
12 (6) request rate increases.

13 (d) This section does not affect the authority of the
14 commission to pursue an enforcement claim against a utility or an
15 affiliated interest.

16 SECTION 31. Section 13.414, Water Code, is amended to read
17 as follows:

18 Sec. 13.414. VIOLATION BY [~~PENALTY--AGAINST~~] RETAIL PUBLIC
19 UTILITY OR AFFILIATED INTEREST. A [~~(a)-Any~~] retail public utility
20 or affiliated interest may not violate [~~that--violates~~] this
21 chapter, fail [~~fails~~] to perform a duty imposed on it, or fail,
22 neglect, [~~fails,--neglects,~~] or refuse [~~refuses~~] to obey an order,
23 rule, direction, or requirement of the commission or decree or
24 judgment of a court [~~is-subject-to-a-civil-penalty-of-not-less-than~~
25 ~~\$100-nor-more-than-\$5,000-for-each-violation~~].

26 [~~(b)--A--retail-public-utility-or-affiliated-interest-commits~~
27 ~~a-separate-violation-each-day-it-continues--to--violate--Subsection~~

1 ~~{a)-of-this-section-~~

2 ~~[{c)--The--attorney--general--shall--institute--suit--on--his--own~~
3 ~~initiative--or--at--the--request--of,--in--the--name--of,--and--on--behalf--of~~
4 ~~the--commission--in--a--court--of--competent--jurisdiction--to--recover--the~~
5 ~~penalty--under--this--section-]~~

6 SECTION 32. Section 15.102(b), Water Code, is amended to
7 read as follows:

8 (b) The board may use the loan fund ~~[may-also-be-used-by-the~~
9 ~~board]~~ to provide grants for:

10 (1) projects that include the provision of ~~[supplying]~~
11 water and wastewater services in economically distressed areas,
12 including projects involving retail distribution of those services;
13 and

14 (2) one or more of the following projects, if the
15 legislature appropriates money specifically for that purpose:

- 16 (A) agricultural water conservation;
17 (B) weather modification;
18 (C) brush control; or
19 (D) production of water in connection with an
20 oil or gas operation.

21 SECTION 33. Section 15.4061(h), Water Code, is amended to
22 read as follows:

23 (h) The board shall require that regional water plans
24 developed or revised under contracts entered into under this
25 section be made available to the commission, the Department of
26 Agriculture, and the Parks and Wildlife Department.

27 SECTION 34. Section 15.7031(c), Water Code, is amended to

1 read as follows:

2 (c) The dedication of any water rights placed in trust must
3 be reviewed and approved by the commission, in consultation with
4 the board and the Parks and Wildlife Department. In addition, the
5 Department of Agriculture may provide input to the commission, as
6 appropriate, during the review and approval process for dedication
7 of water rights.

8 SECTION 35. Sections 16.012(c), (h), and (j), Water Code,
9 are amended to read as follows:

10 (c) In performing the duties required under Subdivisions
11 (1), (4), (5), (6), and (7) of Subsection (b), the executive
12 administrator shall consider advice from the Parks and Wildlife
13 Department. In addition, the Department of Agriculture may provide
14 advice to the executive administrator, where appropriate, regarding
15 any of the duties to be performed under Subsection (b).

16 (h) Within 90 days of completing a water availability model
17 for a river basin, the commission shall provide to all holders of
18 existing permits, certified filings, and certificates of
19 adjudication in that river basin the projected amount of water that
20 would be available[÷] during a drought of record[;--when--flows--are
21 at--75--percent--of--normal;--and--when--flows--are--at--50--percent--of
22 normal].

23 (j) Within 90 days of completing a water availability model
24 for a river basin, the commission, in coordination with the Parks
25 and Wildlife Department and with input from the Department of
26 Agriculture, where appropriate, shall determine the potential
27 impact of reusing municipal and industrial effluent on existing

1 water rights, instream uses, and freshwater inflows to bays and
2 estuaries. Within 30 days of making this determination, the
3 commission shall provide the projections to the board and each
4 regional water planning group created under Section 16.053 of this
5 code in that river basin.

6 SECTION 36. Sections 16.051(a) and (d), Water Code, are
7 amended to read as follows:

8 (a) No later than January 5, 2002 [~~September-17-2001~~], and
9 every five years thereafter, the board shall adopt a comprehensive
10 state water plan that incorporates the regional water plans
11 approved under Section 16.053 [~~of this code~~]. The state water plan
12 shall provide for the orderly development, management, and
13 conservation of water resources and preparation for and response to
14 drought conditions, in order that sufficient water will be
15 available at a reasonable cost to ensure public health, safety, and
16 welfare; further economic development; and protect the agricultural
17 and natural resources of the entire state.

18 (d) The board, in coordination with the commission, the
19 Department of Agriculture, and the Parks and Wildlife Department,
20 shall adopt by rule guidance principles for the state water plan
21 which reflect the public interest of the entire state. When
22 adopting guidance principles, due consideration shall be given to
23 the construction and improvement of surface water resources and the
24 application of principles that result in voluntary redistribution
25 of water resources. The board shall review and update the guidance
26 principles, with input from the commission, the Department of
27 Agriculture, and the Parks and Wildlife Department, as necessary

1 but at least every five years to coincide with the five-year cycle
2 for adoption of a new water plan as described in Subsection (a).

3 SECTION 37. Section 16.053, Water Code, is amended by
4 amending Subsections (c), (e), (i), and (j) and adding Subsections
5 (l) through (o) to read as follows:

6 (c) No later than 60 days after the designation of the
7 regions under Subsection (b) [~~of this section~~], the board shall
8 designate representatives within each regional water planning area
9 to serve as the initial coordinating body for planning. The
10 initial coordinating body may [~~shall~~] then designate additional
11 representatives to serve on the regional water planning group. The
12 initial coordinating body shall designate additional
13 representatives if necessary to ensure[~~ensuring~~] adequate
14 representation from the interests comprising that region, including
15 [~~but not limited to~~] the public, counties, municipalities,
16 industries, agricultural interests, environmental interests, small
17 businesses, electric generating utilities, river authorities, water
18 districts, and water utilities. The regional water planning group
19 shall maintain adequate representation from those interests. In
20 addition, representatives of the board, the Parks and Wildlife
21 Department, and the Department of Agriculture shall serve as ex
22 officio members of each regional water planning group.

23 (e) Each regional water planning group shall submit to the
24 board a regional water plan that:

25 (1) is consistent with the guidance principles for the
26 state water plan adopted by the board under Section 16.051(d) [~~of~~
27 ~~this code~~];

1 (2) provides information based on data provided or
2 approved by the board in a format consistent with the guidelines
3 provided by the board under Subsection (d) [~~of this section~~];

4 (3) identifies:

5 (A) each source of water supply in the regional
6 water planning area in accordance with the guidelines provided by
7 the board under Subsections (d) and (f);

8 (B) factors specific to each source of water
9 supply to be considered in determining whether to initiate a
10 drought response; and

11 (C) actions to be taken as part of the response;

12 (4) has specific provisions for water management
13 strategies to be used[+]

14 [+A+] during a drought of record[+]

15 [+B+--when-flows-are-at-75-percent-of-normal+--and

16 [+C+--when-flows-are-at-50-percent-of-normal+];

17 (5) [+4+] includes but is not limited to consideration
18 of the following:

19 (A) any existing water or drought planning
20 efforts addressing all or a portion of the region;

21 (B) certified groundwater conservation district
22 management plans and other plans submitted under Section 16.054 [~~of~~
23 ~~this code~~];

24 (C) all potentially feasible water management
25 strategies, including but not limited to improved conservation,
26 reuse, and management of existing water supplies, acquisition of
27 available existing water supplies, and development of new water

1 supplies;

2 (D) protection of existing water rights in the
3 region;

4 (E) opportunities for and the benefits of
5 developing regional water supply facilities or providing regional
6 management of water supply facilities;

7 (F) appropriate provision for environmental
8 water needs and for the effect of upstream development on the bays,
9 estuaries, and arms of the Gulf of Mexico and the effect of plans
10 on navigation;

11 (G) provisions in Section 11.085(k)(1) [~~of this~~
12 ~~code~~] if interbasin transfers are contemplated;

13 (H) voluntary transfer of water within the
14 region using, but not limited to, regional water banks, sales,
15 leases, options, subordination agreements, and financing
16 agreements; and

17 (I) emergency transfer of water under Section
18 11.139 [~~of this code~~], including information on the part of each
19 permit, certified filing, or certificate of adjudication for
20 nonmunicipal use in the region that may be transferred without
21 causing unreasonable damage to the property of the nonmunicipal
22 water rights holder; and

23 (6) [~~5~~] identifies river and stream segments of
24 unique ecological value and sites of unique value for the
25 construction of reservoirs that the regional water planning group
26 recommends for protection under Section 16.051 [~~of this code~~].

27 (i) The regional water planning groups shall submit their

1 adopted regional water plans to the board by January 5, 2001
2 [~~September--17-2000~~], for approval and inclusion in the state water
3 plan. In conjunction with the submission of regional water plans,
4 each planning group should make legislative recommendations, if
5 any, to facilitate more voluntary water transfers in the region.
6 Subsequent regional water plans shall be submitted at least every
7 five years thereafter. Public participation for revised regional
8 plans shall follow the procedures under Subsection (h) [~~of this~~
9 ~~section~~].

10 (j) The board may provide financial assistance to political
11 subdivisions under Subchapters E and F of this chapter, [and]
12 Subchapters C, D, E, F, and J, Chapter 15, and Subchapters D, I, K,
13 and L, Chapter 17, [~~of this code~~] for water supply projects only
14 if:

15 (1) the board determines that the needs to be
16 addressed by the project will be addressed in a manner that is
17 consistent with the state water plan; and

18 (2) beginning January 5, 2002 [~~September-17-2001~~], the
19 board:

20 (A) has approved a regional water plan as
21 provided by Subsection (i) [~~of--this--section~~], and any required
22 updates of the plan, for the region of the state that includes the
23 area benefiting from the proposed project; and

24 (B) determines that the needs to be addressed by
25 the project will be addressed in a manner that is consistent with
26 that regional water plan.

27 (1) A political subdivision may contract with a regional

1 water planning group to assist the regional water planning group in
2 developing or revising a regional water plan.

3 (m) A cause of action does not accrue against a regional
4 water planning group, a representative who serves on the regional
5 water planning group, or an employee of a political subdivision
6 that contracts with the regional water planning group under
7 Subsection (1) for an act or omission in the course and scope of
8 the person's work relating to the regional water planning group.

9 (n) A regional water planning group, a representative who
10 serves on the regional water planning group, or an employee of a
11 political subdivision that contracts with the regional water
12 planning group under Subsection (1) is not liable for damages that
13 may arise from an act or omission in the course and scope of the
14 person's work relating to the regional water planning group.

15 (o) The attorney general, on request, shall represent a
16 regional water planning group, a representative who serves on the
17 regional water planning group, or an employee of a political
18 subdivision that contracts with the regional water planning group
19 under Subsection (1) in a suit arising from an act or omission
20 relating to the regional water planning group.

21 SECTION 38. Section 16.054(a), Water Code, is amended to
22 read as follows:

23 (a) It is the policy of the state that water resource
24 management, water conservation, and drought planning should occur
25 on an ongoing basis. The board, commission, and Parks and Wildlife
26 Department shall make available where appropriate technical and
27 financial assistance for such planning. In addition, the

1 Department of Agriculture may provide input and assistance, as
2 appropriate, for such planning.

3 SECTION 39. Section 16.237(a), Water Code, is amended to
4 read as follows:

5 (a) If a person violates a commission rule or order adopted
6 under Section 16.236 [~~of-this-code~~], the commission may assess an
7 administrative penalty against that person as provided by
8 Subchapter C, Chapter 7 [~~Section-11-0842-of-this-code~~].

9 SECTION 40. Sections 17.871(2) and (6), Water Code, are
10 amended to read as follows:

11 (2) "Borrower district" means a political subdivision,
12 including a district or authority created under Article III,
13 Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas
14 Constitution, that receives or is eligible to receive a
15 conservation loan from the board for a purpose described by Section
16 17.895 or 17.8955 [~~improvement-to-district-facilities~~].

17 (6) "Lender district" means a political subdivision,
18 including a soil and water conservation district under Chapter 201,
19 Agriculture Code, an underground water conservation district
20 created under Article XVI, Section 59, of the Texas Constitution,
21 or a district or authority created under Article III, Section
22 52(b)(1), or Article XVI, Section 59, of the Texas Constitution
23 authorized to supply water for irrigation purposes, that is
24 eligible to receive or that receives a loan from the board for the
25 purpose of making conservation loans to individual borrowers.

26 SECTION 41. Subchapter J, Chapter 17, Water Code, is amended
27 by amending Section 17.895 and adding Section 17.8955 to read as

1 follows:

2 Sec. 17.895. CONSERVATION LOANS. (a) This section applies
3 only to a conservation loan:

4 (1) from a lender district that is:

5 (A) a soil and water conservation district under
6 Chapter 201, Agriculture Code;

7 (B) an underground water conservation district
8 created under Section 59, Article XVI, Texas Constitution; or

9 (C) a district or authority created under
10 Section 52(b)(1), Article III, or Section 59, Article XVI, Texas
11 Constitution, authorized to supply water for irrigation purposes;
12 or

13 (2) to a borrower district that is a district or
14 authority created under Sections 52(b)(1) and (2), Article III, or
15 Section 59, Article XVI, Texas Constitution.

16 (b) The board or a lender district [~~districts~~] may make
17 conservation loans for capital equipment or materials, labor,
18 preparation costs, and installation costs:

19 (1) to improve water use efficiency of water delivery
20 and application on existing irrigation systems;

21 (2) for preparing irrigated land to be converted to
22 dryland conditions; and

23 (3) for preparing dryland for more efficient use of
24 natural precipitation[;

25 [~~(4) for preparing and maintaining land to be used for~~
26 ~~brush control activities, including but not limited to activities~~
27 ~~conducted pursuant to Chapter 203, Agriculture Code, or~~

1 ~~[(5)--for---implementing---precipitation---enhancement~~
2 ~~activities-in-areas-of-the-state-where-such-activities-would-be,-in~~
3 ~~the-board's-judgment,-most-effective].~~

4 (c) [(b)] Conservation loans for the purposes listed in
5 Subsection (b) [(a)] may be made by lender districts to individual
6 borrowers for use on private property or by the board to borrower
7 districts ~~[for-use-on-district-facilities].~~

8 (d) [(e)] The board may make conservation loans to borrower
9 districts for the cost of purchasing and installing devices, on
10 public or private property, designed to indicate the amount of
11 water withdrawn for irrigation purposes.

12 (e) For purposes of this subchapter, the board or lender
13 districts may seek the advice of the Department of Agriculture
14 regarding the feasibility of a project for which a conservation
15 loan is sought.

16 Sec. 17.8955. CONSERVATION LOANS FOR BRUSH CONTROL AND
17 PRECIPITATION ENHANCEMENT. (a) The board or a lender district may
18 make a conservation loan for capital equipment or materials, labor,
19 preparation costs, and installation costs for:

20 (1) preparing and maintaining land to be used for
21 brush control activities, including activities conducted under
22 Chapter 203, Agriculture Code; or

23 (2) implementing precipitation enhancement activities
24 in areas of the state where those activities would be, in the
25 board's judgment, most effective.

26 (b) A conservation loan for a purpose listed in Subsection
27 (a) may be made by a lender district to an individual borrower for

1 use on private property or by the board to a borrower district.

2 SECTION 42. Section 26.0135(h), Water Code, is amended to
3 read as follows:

4 (h) The commission shall apportion, assess, and recover the
5 reasonable costs of administering the water quality management
6 programs under this section from users of water and wastewater
7 permit holders in the watershed according to the records of the
8 commission generally in proportion to their right, through permit
9 or contract, to use water from and discharge wastewater in the
10 watershed. Irrigation water rights and hydroelectric rights of
11 facilities of less than five megawatts will not be subject to this
12 assessment. The cost to river authorities and others to conduct
13 water quality monitoring and assessment shall be subject to prior
14 review and approval by the commission as to methods of allocation
15 and total amount to be recovered. The commission shall adopt rules
16 to supervise and implement the water quality monitoring,
17 assessment, and associated costs. The rules shall ensure that
18 water users and wastewater dischargers do not pay excessive
19 amounts, that program funds are equitably apportioned among basins,
20 that a river authority may recover no more than the actual costs of
21 administering the water quality management programs called for in
22 this section, and that no municipality shall be assessed cost for
23 any efforts that duplicate water quality management activities
24 described in Section 26.177 of this chapter. The rules concerning
25 the apportionment and assessment of reasonable costs shall provide
26 for a recovery of not more than \$5,000,000 annually. Costs
27 recovered by the commission are to be deposited to the credit of

1 the water resource management account and may be used only to
2 accomplish the purposes of this section. The commission may apply
3 not more than 10 percent of the costs recovered annually toward the
4 commission's overhead costs for the administration of this section
5 and the implementation of regional water quality assessments. The
6 commission, with the assistance and input of each river authority,
7 shall file a written report accounting for the costs recovered
8 under this section with the governor, the lieutenant governor, and
9 the speaker of the house of representatives on or before December 1
10 of each even-numbered year.

11 SECTION 43. Section 26.121(a), Water Code, is amended to
12 read as follows:

13 (a) Except as authorized by the commission, no person may:

14 (1) discharge sewage, municipal waste, recreational
15 waste, agricultural waste, or industrial waste into or adjacent to
16 any water in the state;

17 (2) discharge other waste into or adjacent to any
18 water in the state which in itself or in conjunction with any other
19 discharge or activity causes, continues to cause, or will cause
20 pollution of any of the water in the state, unless the discharge
21 complies with a person's:

22 (A) certified water quality management plan
23 approved by the State Soil and Water Conservation Board as provided
24 by Section 201.026, Agriculture Code; or

25 (B) water pollution and abatement plan approved
26 by the commission; or

27 (3) commit any other act or engage in any other

1 activity which in itself or in conjunction with any other discharge
2 or activity causes, continues to cause, or will cause pollution of
3 any of the water in the state, unless the activity is under the
4 jurisdiction of the Parks and Wildlife Department, the General Land
5 Office, the Department of Agriculture, or the Railroad Commission
6 of Texas, in which case this subdivision does not apply.

7 SECTION 44. Section 26.127, Water Code, is amended to read
8 as follows:

9 Sec. 26.127. COMMISSION AS PRINCIPAL AUTHORITY. (a) The
10 commission is the principal authority in the state on matters
11 relating to the quality of the water in the state. The executive
12 director has the responsibility for establishing a water quality
13 sampling and monitoring program for the state. All other state
14 agencies engaged in water quality or water pollution control
15 activities shall coordinate those activities with the commission.

16 (b) The executive director may, on behalf of and with the
17 consent of the commission, enter into contracts or other agreements
18 with the Department of Agriculture for purposes of obtaining
19 laboratory services for water quality testing.

20 SECTION 45. Section 35.007(e), Water Code, is amended to
21 read as follows:

22 (e) The executive director shall request a study from the
23 executive director of the Parks and Wildlife Department for the
24 purpose of preparing the report required by this section. The
25 Department of Agriculture may also provide input to the executive
26 director for purposes of the report. The study must:

27 (1) evaluate the potential effects of the designation

of a priority groundwater management area on an area's natural resources; and

(2) be completed and delivered to the executive director on or before the 180th day following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report.

SECTION 46. Chapter 35, Water Code, is amended by adding Section 35.010 to read as follows:

Sec. 35.010. CREATION OF DISTRICTS ON PETITION AFTER DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA. The commission may not consider the creation of a groundwater conservation district in a designated priority groundwater management area before the conclusion of the next regular session of the Texas Legislature following the designation unless the local landowners have initiated a petition process under Chapter 36 for the creation of a groundwater conservation district with a priority groundwater management area.

SECTION 47. Section 35.012, Water Code, is amended by adding new Subsections (c) and (d), relettering existing Subsections (c), (d), (e), and (f) as Subsections (e), (f), (g), and (h), and amending existing Subsection (d) to read as follows:

(c) Not later than the 10th day after the date on which the commission order designating a priority groundwater management area is issued, the commission shall send written notice of the commission's actions to each entity entitled to written notice under Section 35.009(c). The notice must include the commission's

1 findings and conclusions from the data and information considered
2 in designating the priority groundwater management area and the
3 commission's recommendation regarding the need for a groundwater
4 conservation district in the priority groundwater management area.

5 (d) As soon as possible after a commission order designating
6 a priority groundwater management area, the Texas Agricultural
7 Extension Service shall begin an educational program within the
8 area with the assistance and cooperation of the Texas Water
9 Development Board, the commission, the Department of Agriculture,
10 other state agencies, and existing districts to inform the
11 residents of the status of the area's water resources and
12 management options including possible formation of a district.

13 (e) [†e}] Following the issuance of a commission order under
14 Subsection (b), the landowners in the priority groundwater
15 management area may:

16 (1) create one or more districts under Subchapter B,
17 Chapter 36;

18 (2) have the area annexed to a district that adjoins
19 the area; or

20 (3) create one or more districts through the
21 legislative process.

22 (f) [†d}] The commission shall identify the areas subject to
23 the order of the commission issued under Subsection (b) that have
24 not been incorporated into a district and shall delineate proposed
25 boundaries of a district to include those areas. [†f--the
26 commission-proposes-the-creation-of--one--or--more--districts,--the
27 Texas--Agricultural--Extension--Service--shall--begin--an--educational

1 program-within-such-areas-with-the-assistance--and--cooperation--of
 2 the--Texas--Water--Development--Board,--the-commission,--other-state
 3 agencies,--and-existing-districts-to-inform--the--residents--of--the
 4 status--of--the--area's--water--resources--and--management--options
 5 including--possible--formation--of-a-district,--before-beginning-the
 6 procedures-for-creation-of-a-district--provided--in--Subchapter--B,
 7 Chapter-36.]

8 (g) [†e] If the commission fails to find that the district
 9 would be a benefit to the land and other property within the
 10 priority groundwater management area, that there is a public need
 11 for the district, or that creation of the district will further the
 12 public welfare, the commission shall issue an order stating that a
 13 district should not be created within the boundaries of the
 14 priority groundwater management area.

15 (h) [†f] An order of the commission issued under this
 16 section may not be appealed.

17 SECTION 48. Section 35.013(d), Water Code, is amended to
 18 read as follows:

19 (d) If the board votes to accept the addition of the
 20 priority groundwater management area to the district, the board:

21 (1) may request the Texas Agricultural Extension
 22 Service, the commission, and the Texas Water Development Board,
 23 with the cooperation and assistance of the Department of
 24 Agriculture and other state agencies, to administer an educational
 25 program to inform the residents of the status of the area's water
 26 resources and management options including possible annexation into
 27 a district;

1 (2) shall call an election within the priority
2 groundwater management area as delineated by the commission to
3 determine if the priority groundwater management area will be added
4 to the district; and

5 (3) shall designate election precincts and polling
6 places for the elections in the order calling an election under
7 this subsection.

8 SECTION 49. Section 36.014, Water Code, is amended to read
9 as follows:

10 Sec. 36.014. NOTICE AND HEARING ON DISTRICT CREATION. ~~[(a)]~~
11 If a petition is filed under Section 36.013 or the commission
12 proposes that a district be created under Section 35.012(b), the
13 commission shall give notice of the ~~[an]~~ application or proposal as
14 required by Section 49.011(a) and may conduct a hearing on the
15 application or proposal if the commission determines that a hearing
16 is necessary under Section 49.011.

17 ~~[(b)---If---the---petition---contains---a---request---to---create---a~~
18 ~~management-area-in-all-or-part-of-the-proposed-district,---the-notice~~
19 ~~must---also---be-given-in-accordance-with-the-requirements-in-Section~~
20 ~~35.006-for-the-designation-of-management-areas.]~~

21 SECTION 50. Section 36.015, Water Code, is amended to read
22 as follows:

23 Sec. 36.015. FINDINGS. (a) If the commission finds that a
24 district requested by petition or proposed by the commission is
25 feasible and practicable, ~~[that-it]~~ would be a benefit to the land
26 in the district, and ~~[that--it]~~ would be a public benefit or
27 utility, the commission shall issue an order containing these

1 findings granting the petition or adopting the proposal, as
2 appropriate.

3 (b) If the commission finds that a district is not feasible
4 and practicable, that it would not be a benefit to the land in the
5 district, that it would not be a public benefit or utility, or that
6 it is not needed, the commission by order shall deny the petition
7 or reject the proposal, as appropriate.

8 (c) The commission may adjust the boundaries of the proposed
9 district to exclude any land that would not be benefited by
10 inclusion in the district and is not necessary to the district for
11 proper regulation of the groundwater reservoir.

12 (d) If the commission grants the petition or adopts the
13 proposal to create the district, it shall direct in its order
14 creating the district that an election be called by the temporary
15 directors to confirm the creation of the district and to elect
16 permanent directors.

17 (e) ~~[The--refusal--to--grant-a-petition-to-create-a-district~~
18 ~~does-not-invalidate-or-affect-the--designation--of--any--management~~
19 ~~area-requested-in-the-same-petition--~~

20 [{f}] The commission shall act on the petition or its
21 proposal within a reasonable amount of time.

22 SECTION 51. Section 36.0151, Water Code, is amended to read
23 as follows:

24 Sec. 36.0151. NOTICE OF CREATION BY COMMISSION OF DISTRICT
25 FOR PRIORITY GROUNDWATER MANAGEMENT AREA. ~~[(a)--If-the--commission~~
26 ~~proposes--that--a--district--be-created-under-Section-35.012(d)--it~~
27 ~~shall-in-its-order-creating-the--district--provide--that--temporary~~

1 ~~directors-be-appointed-under-Section-36.016-and-that-an-election-be~~
2 ~~called--by--the--temporary-directors-to-confirm-the-creation-of-the~~
3 ~~district-and-to-elect-permanent-directors-~~

4 [~~(b)~~] The commission shall notify the county commissioners
5 court of each county with territory in the district of the
6 district's creation as soon as practicable after issuing the order
7 under Section 36.015(a) creating a [the] district proposed by the
8 commission under Section 35.012(b).

9 SECTION 52. Section 36.051, Water Code, is amended by
10 amending Subsections (b) and (c) and adding Subsection (d) to read
11 as follows:

12 (b) To be qualified to be elected as a director, a person
13 must be a registered voter in the precinct that the person
14 represents.

15 (c) A member of a governing body of another political
16 subdivision is ineligible for appointment or election as a
17 director. A director is disqualified and vacates the office of
18 director if the director is appointed or elected as a member of the
19 governing body of another political subdivision. This subsection
20 does not apply to any district with a population less than 50,000.

21 (d) [~~(c)~~] Vacancies in the office of director shall be
22 filled by appointment of the board. If the vacant office is not
23 scheduled for election for longer than two years at the time of the
24 appointment, the board shall order an election for the unexpired
25 term to be held as part of the next regularly scheduled director's
26 election. The appointed director's term shall end on qualification
27 of the director elected at that election.

1 SECTION 53. Section 36.059(b), Water Code, is amended to
2 read as follows:

3 (b) The directors of the district shall be elected according
4 to the precinct method as defined by Chapter 12, page 1105, Special
5 Laws, Acts of the 46th Legislature, Regular Session, 1939. [~~To--be~~
6 ~~qualified--to--be--elected--as--a--director,--a--person--must--be-a~~
7 ~~registered-voter-in-the-precinct-that-the-person--represents.~~] If
8 any part of a municipal corporation is a part of one precinct, then
9 no part of the municipal corporation shall be included in another
10 precinct, except that a municipal corporation having a population
11 of more than 200,000 may be divided between two or more precincts.
12 In a multicounty district, not more than two of the five precincts
13 may include the same municipal corporation or part of the same
14 municipal corporation.

15 SECTION 54. Section 36.108, Water Code, is amended to read
16 as follows:

17 Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA OR PRIORITY
18 GROUNDWATER MANAGEMENT AREA. (a) If two or more districts are
19 located within the boundaries of the same management area or
20 priority groundwater management area, each district shall prepare a
21 comprehensive management plan as required by Section 36.1071
22 covering that district's respective territory. On completion of
23 the plan, each district shall forward a copy of the new revised
24 management plan to the other districts in the management area or
25 priority groundwater management area.

26 (b) The board of directors of each district in the
27 management area or priority groundwater management area may, by

1 resolution, call a joint meeting with the boards of directors of
2 the other districts in the management area or priority groundwater
3 management area to review the management plans and accomplishments
4 for the management area or priority groundwater management area.
5 The boards shall meet to consider the plans individually and shall
6 compare them to other management plans then in force in the
7 management area. In reviewing the management plans, the boards
8 shall consider:

9 (1) the goals of each management plan and its impact
10 on planning throughout the management area or priority groundwater
11 management area;

12 (2) the effectiveness of the measures established by
13 each management plan for conserving and protecting groundwater and
14 preventing waste, and the effectiveness of these measures in the
15 management area or priority groundwater management area generally;
16 and

17 (3) any other matters that the boards consider
18 relevant to the protection and conservation of groundwater and the
19 prevention of waste in the management area or priority groundwater
20 management area.

21 (c) A joint meeting of the boards of directors must be held
22 in accordance with the Open Meetings Act, Chapter 551, Government
23 Code. Notice of the meeting shall be given in accordance with the
24 requirements for notice of district board of directors meetings
25 under that Act. In addition, notice of the meeting shall be
26 published not later than the 30th day before the date of the
27 scheduled meeting in a newspaper with general circulation in each

1 county in the management area or priority groundwater management
2 area.

3 (d) A district in the management area or priority
4 groundwater management area may file a petition with the commission
5 requesting an inquiry if the petitioner district believes that:

6 (1) another district in the management area or
7 priority groundwater management area has failed to adopt rules;

8 (2) the groundwater in the management area or priority
9 groundwater management area is not adequately protected by the
10 rules adopted by another district; or

11 (3) the groundwater in the management area or priority
12 groundwater management area is not adequately protected due to the
13 failure of another district to enforce substantial compliance with
14 its rules.

15 (e) Not later than the 90th day after the date the petition
16 is filed, the commission shall review the petition and either:

17 (1) dismiss it if it finds that the evidence is not
18 adequate to show that any of the conditions alleged in the petition
19 exist; or

20 (2) select a review panel as provided in Subsection
21 (f).

22 (f) The commission may appoint a review panel consisting of
23 a chairman and four other members. A director or general manager
24 of a district located outside the management area or priority
25 groundwater management area that is the subject of the petition may
26 be appointed to the review panel. The commission may not appoint
27 more than two members of the review panel from any one district.

1 The commission also shall appoint a disinterested person to serve
2 as a nonvoting recording secretary for the review panel. The
3 recording secretary may be an employee of the commission. The
4 recording secretary shall record and document the proceedings of
5 the panel.

6 (g) Not later than the 120th day after appointment, the
7 review panel shall review the petition and any evidence relevant to
8 the petition and, in a public meeting, prepare a report to the
9 commission. The commission may direct the review panel to conduct
10 public hearings at a location in the management area or priority
11 groundwater management area to take evidence on the petition. The
12 review panel may attempt to negotiate a settlement or resolve the
13 dispute by any lawful means.

14 (h) In its report, the review panel shall include:

15 (1) a summary of all evidence taken in any hearing on
16 the petition;

17 (2) a list of findings and recommended actions
18 appropriate for the commission to take and the reasons it finds
19 those actions appropriate; and

20 (3) any other information the panel considers
21 appropriate.

22 SECTION 55. Section 341.047, Health and Safety Code, is
23 transferred to Subchapter E, Chapter 7, Water Code, redesignated as
24 Section 7.1605, Water Code, and amended to read as follows:

25 Sec. 7.1605 [~~341-047~~]. VIOLATIONS RELATING TO PUBLIC
26 DRINKING WATER [~~CRIMINAL--PENALTY~~]. (a) A person commits an
27 offense if the person:

1 (1) violates a provision of Section 341.031, Health
2 and Safety Code;

3 (2) violates a provision of Section 341.032(a) or (b),
4 Health and Safety Code;

5 (3) violates a provision of Section 341.033(a)-(f),
6 Health and Safety Code;

7 (4) constructs a drinking water supply system without
8 submitting completed plans and specifications as required by
9 Section 341.035(c), Health and Safety Code;

10 (5) begins construction of a drinking water supply
11 system without the commission's approval as required by Section
12 341.035(a), Health and Safety Code;

13 (6) violates a provision of Section 341.0351 or
14 341.0352, Health and Safety Code;

15 (7) fails to remove a sign as required by Section
16 341.0354, Health and Safety Code; or

17 (8) violates a provision of Section 341.036, Health
18 and Safety Code.

19 (b) An offense under Subsection (a) is a Class C
20 misdemeanor.

21 (c) If it is shown on a trial of the defendant that the
22 defendant has been convicted of an offense under Subsection (a)
23 within a year before the date on which the offense being tried
24 occurred, the subsequent offense under Subsection (a) is a Class B
25 misdemeanor.

26 (d) Each day of a continuing violation is a separate
27 offense.

1 SECTION 56. Section 341.048, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 341.048. VIOLATION [~~CIVIL-ENFORCEMENT~~]. [~~(a)~~] A person
4 may not cause, suffer, allow, or permit a violation of this
5 subchapter or a rule or order adopted under this subchapter.

6 [~~(b)~~--A--person--who--causes,--suffers,--allows,--or--permits--a
7 violation--under--this--subchapter--shall--be--assessed--a--civil--penalty
8 of--not--less--than--\$50--nor--more--than--\$1,000--for--each--violation.--Each
9 day--of--a--continuing--violation--is--a--separate--violation.

10 [~~(c)~~--If--it--appears--that--a--person--has--violated,--is--violating,
11 or--threatens--to--violate--a--provision--under--this--subchapter,--the
12 commission,--a--county,--or--a--municipality--may--institute--a--civil--suit
13 in--a--district--court--for:

14 [~~(1)~~--injunctive--relief--to--restrain--the--person--from
15 continuing--the--violation--or--threat--of--violation;

16 [~~(2)~~--the--assessment--and--recovery--of--a--civil--penalty,
17 or

18 [~~(3)~~--both--injunctive--relief--and--a--civil--penalty.

19 [~~(d)~~--The--commission--is--a--necessary--and--indispensable--party
20 in--a--suit--brought--by--a--county--or--municipality--under--this--section.

21 [~~(e)~~--On--the--commission's--request,--the--attorney--general--shall
22 institute--a--suit--in--the--name--of--the--state--for--injunctive--relief,--to
23 recover--a--civil--penalty,--or--for--both--injunctive--relief--and--civil
24 penalty.

25 [~~(f)~~--The--suit--may--be--brought--in:

26 [~~(1)~~--Travis--County,

27 [~~(2)~~--the--county--in--which--the--defendant--resides,--or

1 ~~[(3)--the--county--in--which--the--violation--or--threat--of~~
2 ~~violation--occurs--~~

3 ~~[(g)--In--a--suit--under--this--section--to--enjoin--a--violation--or~~
4 ~~threat--of--violation--of--this--subchapter,--the--court--shall--grant--the~~
5 ~~state,--county,--or--municipality,--without--bond--or--other--undertaking,~~
6 ~~any--injunction--that--the--facts--may--warrant--including--temporary~~
7 ~~restraining--orders,--temporary--injunctions--after--notice--and--hearing,~~
8 ~~and--permanent--injunctions--~~

9 ~~[(h)--Civil--penalties--recovered--in--a--suit--brought--under--this~~
10 ~~section--by--a--county--or--municipality--shall--be--equally--divided~~
11 ~~between:~~

12 ~~[(1)--the--state,--and~~

13 ~~[(2)--the--county--or--municipality--that--first--brought--the~~
14 ~~suit--]~~

15 SECTION 57. Section 341.0485(c), Health and Safety Code, is
16 amended to read as follows:

17 (c) The comptroller shall manage the account for the benefit
18 of the commission and shall invest the money and deposit interest
19 and other investment proceeds in the account. The comptroller
20 shall release money from the account in the manner provided by the
21 commission. Money in the account may be used only for:

22 (1) capital improvements to the water or sewer system
23 of a utility that has paid fines or penalties under this chapter or
24 under Chapter 13, Water Code, that have been deposited in the
25 account; or

26 (2) capital improvements and operating and maintenance
27 expenses for a utility placed in receivership or under a temporary

1 manager under Section 7.404 [~~13-4132~~], Water Code.

2 SECTION 58. The heading to Section 44.901, Education Code,
3 is amended to read as follows:

4 Sec. 44.901. ENERGY OR WATER CONSERVATION MEASURES

5 SECTION 59. Sections 44.901(a)-(f), Education Code, are
6 amended to read as follows:

7 (a) The board of trustees of a school district may enter
8 into a contract for energy or water conservation measures to reduce
9 energy or water consumption or operating costs of school facilities
10 in accordance with this section.

11 (b) A contract to which this section applies includes a
12 contract for the installation of:

13 (1) insulation of the building structures and systems
14 within the building;

15 (2) storm windows or doors, caulking or
16 weatherstripping, multiglazed windows or doors, heat absorbing or
17 heat reflective glazed and coated window or door systems, or other
18 window or door system modifications that reduce energy consumption;

19 (3) automatic energy control systems, including
20 computer software and technical data licenses;

21 (4) heating, ventilating, or air-conditioning system
22 modifications or replacements that reduce energy or water
23 consumption;

24 (5) lighting fixtures that increase energy efficiency;

25 (6) energy recovery systems;

26 (7) electric systems improvements; [~~or~~]

27 (8) water-conserving landscape irrigation equipment;

1 (9) water-saving plumbing fixtures, appliances, or
2 equipment;

3 (10) water reuse, rainwater harvesting, or other
4 alternative water source technologies for landscape irrigation,
5 toilet and urinal flushing, or other purposes;

6 (11) substitution of non-water-using fixtures,
7 appliances, equipment, or practices for water-using fixtures,
8 appliances, equipment, or practices, if feasible; or

9 (12) other energy or water conservation-related
10 improvements or equipment (including improvements or equipment
11 relating to renewable energy).

12 (c) All energy or water conservation measures must comply
13 with current local, state, and federal construction and
14 environmental codes and regulations. Notwithstanding anything to
15 the contrary in Subsection (b), a contract for energy or water
16 conservation measures shall not include improvements or equipment
17 that allow or cause water from any condensing, cooling, or
18 industrial process or any system of nonpotable usage over which the
19 public water supply system officials do not have sanitary
20 control[7] to be returned to the potable water supply.

21 (d) The person with whom the board contracts must be
22 experienced in the design, implementation, and installation of the
23 energy or water conservation measures addressed by the contract.
24 Section 19, The Texas Engineering Practice Act (Article 3271a,
25 Vernon's Texas Civil Statutes), applies to work performed under the
26 contract.

27 (e) Before entering into a contract for energy or water

1 conservation measures, the board shall require the provider of the
2 energy or water conservation measures to file with the board a
3 payment and performance bond relating to the installation of energy
4 or water conservation measures that is in an amount the board finds
5 reasonable and necessary to protect the interests of the school
6 district and that may also cover the value of the guaranteed
7 savings on the contract and is conditioned on the faithful
8 execution of the terms of the contract.

9 (f) A contract for energy or water conservation measures,
10 with respect to existing buildings or facilities, may be a
11 lease/purchase contract, with a term not to exceed 10 years, that
12 meets federal tax requirements for tax-free municipal leasing or
13 long-term financing. The contract shall contain provisions
14 pursuant to which the provider of the energy or water conservation
15 measures guarantees the amount of the savings to be realized by the
16 school district under the contract. If the term of a contract for
17 energy or water conservation measures exceeds one year, the school
18 district's contractual obligations in any one year during the term
19 of the contract may not exceed the total energy or water and
20 operating cost savings, including but not limited to electrical,
21 gas, water, or other utility cost savings and operating cost
22 savings resulting from automatic monitoring and control as
23 determined by the school district in this subsection, divided by
24 the number of years in the contract term.

25 SECTION 60. Section 51.927, Education Code, as amended by
26 Chapters 627 and 1142, Acts of the 75th Legislature, Regular
27 Session, 1997, is reenacted and amended to read as follows:

1 Sec. 51.927. ENERGY OR WATER CONSERVATION MEASURES. (a)

2 The governing board of an institution of higher education may enter
3 into a contract for energy or water conservation measures to reduce
4 energy or water consumption or operating costs of institutional
5 facilities in accordance with this section.

6 (b) A contract to which this section applies includes a
7 contract for the installation of:

8 (1) insulation of a building structure and systems
9 within a building;

10 (2) storm windows of doors, caulking or weather
11 stripping, multiglazed windows or doors, heat-absorbing or
12 heat-reflective glazed and coated window or door systems, or other
13 window or door system modifications that reduce energy consumption;

14 (3) automatic energy control systems, including
15 computer software and technical data licenses;

16 (4) heating, ventilating, or air conditioning system
17 modifications or replacements that reduce energy or water
18 consumption;

19 (5) lighting fixtures that increase energy efficiency;

20 (6) energy recovery systems;

21 (7) electric systems improvements; [or]

22 (8) water-conserving landscape irrigation equipment;

23 (9) water-saving plumbing fixtures, appliances, or
24 equipment;

25 (10) water reuse, rainwater harvesting, or other
26 alternative water source technologies for landscape irrigation,
27 toilet and urinal flushing, or other purposes;

1 (11) substitution of non-water-using fixtures,
2 appliances, equipment, or practices for water-using fixtures,
3 appliances, equipment, or practices, if feasible; or

4 (12) other energy or water conservation-related
5 improvements or equipment (including improvements or equipment
6 related to renewable energy).

7 (c) All energy or water conservation measures must comply
8 with current local, state, and federal construction and
9 environmental codes and regulations. Notwithstanding anything to
10 the contrary in Subsection (b), a contract for energy or water
11 conservation measures shall not include improvements or equipment
12 that allow or cause water from any condensing, cooling, or
13 industrial process or any system of nonpotable usage over which the
14 public water supply system officials do not have sanitary
15 control[7] to be returned to the potable water supply.

16 (d) The entity with whom the board contracts must be
17 experienced in the design, implementation, and installation of the
18 energy or water conservation measures addressed by the contract.
19 Section 19, The Texas Engineering Practice Act (Article 3271a,
20 Vernon's Texas Civil Statutes), applies to work performed under the
21 contract.

22 (e) Before entering into a contract for energy or water
23 conservation measures, the board shall require the provider of the
24 energy or water conservation measures to file with the board a
25 payment and performance bond that is in an amount the board finds
26 reasonable and necessary to protect the interests of the
27 institution and is conditioned on the faithful execution of the

1 terms of the contract.

2 (f) The board may enter into a contract for a period of more
3 than one year for energy or water conservation measures with an
4 entity if the board finds that the amount the institution would
5 spend on the energy or water conservation measures will not exceed
6 the amount to be saved in energy or water and operating costs over
7 10 years from the date of installation. If the term of a contract
8 for energy or water conservation measures exceeds one year, the
9 board's contractual obligation in any year during the term of the
10 contract beginning after the final date of installation may not
11 exceed the total energy or water and operating cost savings,
12 including but not limited to electrical, gas, water, or other
13 utility cost savings and operating cost savings resulting from
14 automatic monitoring and control, as determined by the board in
15 this subsection, divided by the number of years in the contract
16 term beginning after the final date of installation. The board
17 shall consider all costs of the energy or water conservation
18 measures, including costs of design, engineering, installation,
19 maintenance, repairs, and debt service.

20 (g) A contract for energy or water conservation measures may
21 be a lease/purchase contract, with a term not to exceed 10 years
22 after the final date of installation, that meets federal tax
23 requirements for tax-free municipal leasing or long-term financing.
24 The contract shall contain provisions pursuant to which the
25 provider of the energy or water conservation measures guarantees
26 the amount of the savings to be realized by the institution of
27 higher education under the contract. The Master Equipment Lease

Purchase Program operated by the Texas Public Finance Authority may be utilized by an institution to fund a contract for energy or water conservation measures so long as the costs of the energy or water conservation measures, including costs of design, engineering, installation, maintenance, repairs, and anticipated debt service requirements of the Master Equipment Lease Purchase Program, do not exceed the total energy or water and operating cost savings, as described in Subsection (f) [~~(e)~~], beginning after the final date of installation.

(h) A contract under this section may be let under competitive sealed proposal procedures. Notice of the request for proposals shall be given in the manner provided for in Chapter 2156, Government Code. The Texas Higher Education Coordinating Board, in consultation with the State Energy Conservation Office and the Texas Energy Coordination Council with regard to energy conservation measures and the Texas Water Development Board with regard to water conservation measures, shall establish guidelines and an approval process for contracts awarded under this section. The guidelines must require that the cost savings projected by offerors be reviewed by a licensed professional engineer selected by the board who is not an officer or employee of an offeror or otherwise associated with a proposed contract. A contract is not required to be reviewed or approved by the [The] State Energy Conservation Office, [and] the Texas Energy Coordination Council, or the Texas Water Development Board [~~shall review the selected proposal--before--a--contract--is--awarded.----The---State---Energy Conservation--Office--may--provide--a--cost-benefit-analysis-of-the~~]

1 ~~proposals-and-an-analysis-of-the-guaranteed--savings--projected--by~~
 2 ~~offerors--and--may--charge--a--fee-for-this-service~~]. The contract
 3 shall be awarded to the responsible offeror whose proposal,
 4 following negotiations, is determined by the institution to be the
 5 most advantageous to the institution considering the guaranteed
 6 savings and other evaluation factors set forth in the request for
 7 proposals, except that if the institution finds that no offer is
 8 acceptable, it shall refuse all offers.

9 (i) In accordance with regulations adopted by the
 10 institution, the institution may conduct discussions with offerors
 11 who submit proposals and who are determined to be reasonably
 12 qualified for the award of the contract. Offerors shall be treated
 13 fairly and equally with respect to any opportunity for discussion
 14 and revision of proposals. To obtain the best final offers, the
 15 institution may allow proposal revisions after submissions and
 16 before the award of the contract.

17 (j) If provided in a request for proposals under Subsection
 18 (h) [~~(g)--of--this-section~~], proposals shall be opened in a manner
 19 that avoids disclosure of the contents to competing offerors and
 20 keeps the proposals secret during negotiations. All proposals are
 21 open for public inspection after a contract is awarded unless the
 22 information is excepted from disclosure under Chapter 552,
 23 Government Code.

24 (k) The legislature shall base an institution's
 25 appropriation for energy or water costs during a fiscal year on the
 26 sum of:

- 27 (1) the institution's estimated energy or water costs

1 for that fiscal year; and

2 (2) if a contract under this section is in effect, the
3 institution's estimated net savings resulting from the contract
4 during the contract term, divided by the number of years in the
5 contract term.

6 SECTION 61. The heading to Section 2166.406, Government
7 Code, is amended to read as follows:

8 Sec. 2166.406. ENERGY OR WATER CONSERVATION MEASURES

9 SECTION 62. Sections 2166.406(a)-(h), (k), and (l),
10 Government Code, are amended to read as follows:

11 (a) Notwithstanding any other provisions of this chapter,
12 the governing body of a state agency, without the consent of the
13 commission, may enter into a contract for energy or water
14 conservation measures to reduce energy or water consumption or
15 operating costs of governmental facilities in accordance with this
16 section.

17 (b) A contract authorized under this chapter includes a
18 contract for the installation of:

19 (1) insulation of the building structure and systems
20 within the building;

21 (2) storm windows or doors, caulking or weather
22 stripping, multiglazed windows or doors, heat absorbing or heat
23 reflective glazed and coated window or door systems, or other
24 window or door system modifications that reduce energy consumption;

25 (3) automatic energy control systems, including
26 computer software and technical data licenses;

27 (4) heating, ventilating, or air-conditioning system

1 modifications or replacements that reduce energy or water
2 consumption;

3 (5) lighting fixtures that increase energy efficiency;
4 (6) energy recovery systems;
5 (7) electric systems improvements; [or]
6 (8) water-conserving landscape irrigation equipment;
7 (9) water-saving plumbing fixtures, appliances, or
8 equipment;

9 (10) water reuse, rainwater harvesting, or other
10 alternative water source technologies for landscape irrigation,
11 toilet and urinal flushing, or other purposes;

12 (11) substitution of non-water-using fixtures,
13 appliances, equipment, or practices for water-using fixtures,
14 appliances, equipment, or practices, if feasible; or

15 (12) other energy or water conservation-related
16 improvements or equipment (including improvements or equipment
17 related to renewable energy).

18 (c) All energy or water conservation measures must comply
19 with current local, state, and federal construction and
20 environmental codes and regulations. Notwithstanding anything to
21 the contrary in Subsection (b), a contract for energy or water
22 conservation measures shall not include improvements or equipment
23 that allow or cause water from any condensing, cooling, or
24 industrial process or any system of nonpotable usage over which the
25 public water supply system officials do not have sanitary control
26 to be returned to the potable water supply.

27 (d) The entity with whom the board contracts must be

1 experienced in the design, implementation, and installation of the
2 energy or water conservation measures addressed by the contract.
3 Section 19, The Texas Engineering Practice Act (Article 3271a,
4 Vernon's Texas Civil Statutes), applies to work performed under the
5 contract.

6 (e) Before entering into a contract for energy or water
7 conservation measures, the governing body of the state agency shall
8 require the provider of the energy or water conservation measures
9 to file with the governing body a payment and performance bond that
10 is in an amount the governing body finds reasonable and necessary
11 to protect the interests of the state agency and that is
12 conditioned on the faithful execution of the terms of the contract.

13 (f) The state agency may enter into a contract for a period
14 of more than one year for energy or water conservation measures
15 with an entity if the state agency finds that the amount the state
16 agency would spend on the energy or water conservation measures
17 will not exceed the amount to be saved in energy or water and
18 operating costs over 10 years from the date of installation.

19 (g) A contract for energy or water conservation measures,
20 with respect to existing buildings or facilities, may be a
21 lease/purchase contract with a term not to exceed 10 years, that
22 meets federal tax requirements for tax-free municipal leasing or
23 long-term financing. The contract shall contain provisions
24 pursuant to which the provider of the energy or water conservation
25 measures guarantees the amount of the savings to be realized by the
26 state agency under the contract. If the term of a contract for
27 energy or water conservation measures exceeds one year, the

1 agency's contractual obligation in any year during the term of the
 2 contract may not exceed the total energy or water and operating
 3 cost savings, including but not limited to electrical, gas, water,
 4 or other utility cost savings and operating cost savings resulting
 5 from automatic monitoring and control, as determined by the state
 6 agency in this subsection, divided by the number of years in the
 7 contract term.

8 (h) A contract under this chapter may be let under
 9 competitive sealed proposal procedures. Notice of the request for
 10 proposals shall be given in the manner provided for in Chapter
 11 2156, Government Code. A contract must comply with the guidelines
 12 established under Section 51.927(h), Education Code. The cost
 13 savings projected by offerors must be reviewed by a licensed
 14 professional engineer selected by the governing body of the state
 15 agency having charge and control of the building and facility who
 16 is not an officer or employee of an offeror or otherwise associated
 17 with a proposed contract. A contract is not required to be
 18 reviewed or approved by the State Energy Conservation Office, the
 19 Texas Energy Coordination Council, or the Texas Water Development
 20 Board [~~Before-awarding-the-contract, the state agency shall submit~~
 21 ~~the--selected--proposal-to-the-State-Energy-Conservation-Office-and~~
 22 ~~the-Texas-Energy-Coordination-Council-for-review-and-comment-before~~
 23 ~~awarding-the-contract.--The-State-Energy--Conservation--Office--and~~
 24 ~~the--Texas--Energy-Coordination-Council-will-provide-a-cost-benefit~~
 25 ~~analysis-of-the-proposals-and-an-analysis-of-the-guaranteed-savings~~
 26 ~~projected-by-offerors-and-may-charge-a-fee-for-this-service~~]. The
 27 contract shall be awarded to the responsible offeror whose

1 proposal, following negotiations, is determined to be the most
2 advantageous to the state agency considering the savings and other
3 evaluation factors set forth in the request for proposals except
4 that if the state agency finds that no offer is acceptable, it
5 shall refuse all offers.

6 (k) To obtain the best final offers, the state agency may
7 allow proposal revisions after submissions and before the award of
8 the contract. Final review and approval of a [the] contract for
9 energy conservation measures will be provided by the State Energy
10 Conservation Office.

11 (l) The legislature shall base an agency's appropriation for
12 energy or water costs during a fiscal year on the sum of:

13 (1) the agency's estimated energy or water costs for
14 that fiscal year; and

15 (2) if a contract under this section is in effect, the
16 agency's estimated net savings resulting from the contract during
17 the contract term, divided by the number of years in the contract
18 term.

19 SECTION 63. (a) Sections 11.082, 11.0841, 11.0842, 11.148,
20 13.411, 13.4133, 13.4151, 13.416, 13.417, and 13.418, Water Code,
21 are repealed.

22 (b) Sections 341.049 and 341.050, Health and Safety Code,
23 are repealed.

24 SECTION 64. This Act takes effect September 1, 1999.

25 SECTION 65. (a) The changes in law made by this Act apply
26 only to an offense committed or a violation or threat of violation
27 that occurs on or after September 1, 1999. For purposes of this

1 section an offense is committed and a violation or threat of
2 violation occurs before September 1, 1999, if any element of the
3 offense, violation, or threat of violation occurs before that date.

4 (b) An offense committed or a violation or threat of
5 violation that occurred before September 1, 1999, is covered by the
6 law in effect when the offense was committed or the violation or
7 threat of violation occurred, and the former law is continued in
8 effect for that purpose.

9 (c) The change in law made by Section 15.102(b), Water Code,
10 as amended by this Act, applies only to an application for a grant
11 from the water loan assistance fund that is filed on or after the
12 effective date of this Act. A grant application that is filed
13 before the effective date of this Act is governed by the law in
14 effect immediately before the effective date of this Act, and that
15 law is continued in effect for that purpose.

16 (d) The changes in law made by Sections 16.053(m)-(o), Water
17 Code, as added by this Act, apply only to a cause of action that
18 accrues on or after the effective date of this Act. A cause of
19 action that accrued before the effective date of this Act is
20 governed by the law in effect on the date the cause of action
21 accrued, and that law is continued in effect for that purpose.

22 (e) The changes in law made by Sections 17.871 and 17.895,
23 Water Code, as amended by this Act, and Section 17.8955, Water
24 Code, as added by this Act, apply only to a conservation loan for
25 which an application is filed on or after the effective date of
26 this Act. A conservation loan for which an application was filed
27 before the effective date of this Act is governed by the law in

1 effect immediately before the effective date of this Act, and that
2 law is continued in effect for that purpose.

3 SECTION 66. The importance of this legislation and the
4 crowded condition of the calendars in both houses create an
5 emergency and an imperative public necessity that the
6 constitutional rule requiring bills to be read on three several
7 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable James E. "Pete" Laney
Speaker of the House of Representatives

5/10/99
(date)

Sir:

We, your COMMITTEE ON NATURAL RESOURCES

to whom was referred SB 1311 have had the same under consideration and beg to report back with the recommendation that it

- ☐ do pass, without amendment.
☐ do pass, with amendment(s).
☒ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
☒ yes ☐ no A fiscal note was requested.
☐ yes ☒ no A criminal justice policy impact statement was requested.
☐ yes ☒ no An equalized educational funding impact statement was requested.
☐ yes ☒ no An actuarial analysis was requested.
☐ yes ☒ no A water development policy impact statement was requested.
☐ yes ☒ no A tax equity note was requested.
☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor Ron Lewis

Joint Sponsors: _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Counts, Chair	✓			
King, T., Vice-chair				✓
Cook	✓			
Corte	✓			
Hamric	✓			
Lewis, R.	✓			
Puente				✓
Shields	✓			
Walker	✓			

Total

7 aye
0 nay
0 present, not voting
2 absent

CHAIR

David Puente

BILL ANALYSIS

Office of House Bill Analysis

C.S.S.B. 1311
By: Brown
Natural Resources
5/13/1999
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 75th Texas Legislature enacted legislation establishing a comprehensive framework for the development and management of the state's water resources. Follow-up legislation may be needed to consolidate the emergency and enforcement provisions of the Texas Natural Resource Conservation Commission, provide for coordinated management planning districts within the same priority groundwater management area, streamline the issuance of temporary water rights permits, distinguish the issuance of an emergency water right from an emergency transfer of water, and address certain other issues. C.S.S.B. 1311 amends the Water Code and the Health and Safety Code to address these issues.

RULEMAKING AUTHORITY

It is the opinion of the Office of House Bill Analysis that rulemaking authority is expressly delegated to the Texas Natural Resource Conservation Commission (TNRCC) in SECTION 6 (Sections 5.517 and 5.518, Water Code) and SECTION 22 (Section 11.138, Water Code), of this bill. It is the opinion of the Office of House Bill Analysis that rulemaking authority previously delegated to TNRCC is modified in SECTION 2 (Section 5.103, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.102(a), Water Code, to provide that the Texas Natural Resource Conservation Commission (TNRCC) has the powers to perform any acts whether specifically authorized by this code or other law or necessarily implied, rather than implied, by this code or other law, in order, rather than necessary and convenient, to exercise its jurisdiction and powers as provided by this code and other laws. Makes conforming changes.

SECTION 2. Amends Section 5.103, Water Code, by adding Subsection (d), as follows:

(d) Requires TNRCC, in adopting a rule, to cite the statute granting the specific regulatory authority to be exercised under the proposed rule. Provides that citation to this section (Rules) or Section 5.013 (General Jurisdiction of Commission) does not fulfill TNRCC's obligation under this section.

SECTION 3. Amends Section 5.504(a), Water Code, to require that an emergency order issued under Section 5.517 or 5.518 set a time for the hearing not later than the 20th day after the date the emergency order is issued.

SECTION 4. Amends Section 5.507, Water Code, to make a conforming change.

SECTION 5. Amends Section 5.508(a), Water Code, to make a conforming change.

SECTION 6. Amends Subchapter L, Chapter 5, Water Code, by adding Sections 5.517, 5.518, 5.519, and 5.520, as follows:

Sec. 5.517. EMERGENCY PERMIT TO DIVERT AND USE WATER; AMENDMENT TO WATER RIGHT. (a) Authorizes the TNRCC, except as provided by Section 5.506 (Emergency Suspension of Permit Condition Relating to Beneficial Inflows to Affected Bays and Estuaries and Instream Uses) and after notification to the governor, to issue by

emergency order a permit to divert and use water or amend an existing permit, certified filing, or certificate of adjudication for an initial period not to exceed 120 days if TNRCC finds that emergency conditions exist that override the necessity to comply with established statutory procedures and there is no feasible alternative to the emergency authorization. Authorizes the renewal of an emergency authorization once for a period not to exceed 60 days.

(b) Authorizes the executive director of TNRCC (executive director) to issue an emergency order if an imminent threat to the public health and safety that requires emergency action before TNRCC can take action under Subsection (a) and there is no feasible alternative. Requires TNRCC, if the executive director issues an emergency order under this subsection, to hold hearing as provided for in Section 5.504 (Hearing to Affirm, Modify, or Set Aside Order) as soon as practicable but not later than 20 days after issuance of the order to affirm, modify, or set aside the order.

(c) Provides that the notice requirements of Section 11.132 (Notice) relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an application for an emergency order under this section. Requires TNRCC to give the general notice of the hearing that it considers practicable under the circumstances.

(d) Authorizes TNRCC to adopt rules and impose fees necessary to carry out the provisions of this section.

(e) Provides that an emergency order under this section does not vest in the grantee any right to the diversion, impoundment, or use of water and expires by its terms.

Sec. 5.518. EMERGENCY ORDER FOR TEMPORARY TRANSFER OF USE OF WATER RIGHT. (a) Authorizes TNRCC by emergency order to grant the temporary transfer and use of all or part of a surface water right for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety purposes.

(b) Authorizes TNRCC to direct the applicant to timely pay the amounts for which the applicant may be potentially liable under this section and to fully indemnify and hold harmless the state, executive director, and TNRCC from any and all liability for the order sought. Authorizes TNRCC to order bond or other surety in a form acceptable to TNRCC as a condition for an emergency order under this section. Prohibits TNRCC from granting an emergency authorization under this section that would cause a violation of a federal regulation.

(c) Requires the executive director or TNRCC, in transferring the amount of water requested by the applicant, to allocate the requested amount among two or more permits, certified filings, or certificates of adjudication for a use other than domestic, municipal, or electric generation.

(d) Provides that a person granted an emergency authorization under this section is liable to the owner from whom the use is transferred and for any damages proximately caused by the transfer of use. Authorizes either party to file a complaint with TNRCC to determine the amount due, if, within 60 days of the termination of the order, the parties do not agree on the amount due, or if full payment is not made.

(e) Requires TNRCC, by rule, to establish a dispute resolution procedure for a complaint filed under this section. Authorizes an owner from whom the use is transferred to file suit to recover or determine the amount due in a district court in the county where the owner resides or has its headquarters. Entitles the prevailing party in a suit filed under this subsection to recover court cost and reasonable attorney's fees.

Sec. 5.519. EMERGENCY WORKS SAFETY ORDER. Authorizes TNRCC to issue a mandatory or prohibitory emergency order directing the owner of a dam, levee, or other

water-storage or flood-control work to repair, modify, maintain, dewater, or remove a work if TNRCC finds certain conditions exist.

Sec. 5.520. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. Authorizes TNRCC to issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 7.404. Provides that notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 7. Amends Section 7.004, Water Code, to provide that nothing in this chapter affects the right of a political subdivision that has a justiciable interest, in addition to a private corporation or individual, to pursue any available common law remedy to enforce a right, in addition to abate a condition of pollution or other nuisance, to recover damages to enforce a right, or to prevent or seek redress or compensation for violation of a right or otherwise redress an injury.

SECTION 8. Amends Subchapter B, Chapter 7, Water Code, by adding Section 7.034, as follows:

Sec. 7.034. ATTORNEY'S FEES; COSTS. Authorizes a district court to award the cost of litigation, including reasonable attorney's fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of Chapter 11 (Water Rights) or a rule adopted under Chapter 11.

SECTION 9. Amends Section 7.051(b), Water Code, to provide that this subchapter (Administrative Penalties) does apply to Section 16.236 (Construction of Levee Without Approval of Plans; Levee Safety). Deletes language that provides that this subchapter does not apply to Chapters 11 (Water Rights), 13 (Water Rates and Services) or 36 (Groundwater Conservation Districts), Water Code, or Chapter 341 (Minimum Standards of Sanitation and Health Protection Measures), Health and Safety Code. Makes a conforming change.

SECTION 10. Amends Section 7.052, Water Code, to prohibit the amount of the penalty for a violation under Chapter 11 from exceeding \$5,000 a day for each violation. Prohibits the penalty for a violation of a rule or order adopted under Section 16.236 from exceeding \$1,000 a day for each violation. Prohibits the amount of a penalty for a violation under Chapter 341, Health and Safety Code, from being less than \$50 or more than \$1,000 for each violation. Makes conforming changes.

SECTION 11. Amend Section 7.054, Water Code, to provide that a report regarding a possible violation under Chapter 11 must state the facts on which the conclusion was based and recommend the amount of any penalty. Requires the executive director to base the recommended amount of the proposed penalty on the factors provided by Section 7.053 and to analyze each factor for the benefit of TNRCC.

SECTION 12. Amends Section 7.069, Water Code, to require a penalty collected under this subchapter from a public utility to be paid to TNRCC and deposited in the water utility improvement account as provided by Section 341.0485 (Water Utility Improvement Account), Health and Safety Code. Makes conforming changes.

SECTION 13. Amends Subchapter C, Chapter 7, Water Code, by adding Section 7.076, as follows:

Sec. 7.076. COMPROMISE, MODIFICATION, OR REMISSION OF CERTAIN PENALTIES. Authorizes TNRCC to compromise, modify, or remit, with or without condition, any penalty imposed under this subchapter for a violation under Chapter 11.

SECTION 14. Amends Section 7.102, Water Code, to prohibit the amount of a penalty for a violation of a rule under Section 12.052 (Dam Safety) from exceeding \$5,000. Requires that a person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 13 (Water Rates and Services), be assessed for each violation a civil penalty not less than \$100 nor greater than \$5,000 for each day of each violation as the court or jury considers proper. Makes

conforming changes.

SECTION 15. Amends Sections 7.105(a) and (c), Water Code, to authorize the attorney general to initiate a suit for recovery of a penalty under this section for a violation under Section 13.414 (Penalty Against Retail Public Utility or Affiliated Interest). Authorizes a suit to recover a penalty for a violation of a rule or order issued by TNRCC under Section 12.052 to be brought in Travis County. Makes conforming changes.

SECTION 16. Amends Subchapter D, Chapter 7, Water Code, by adding Section 7.1075, as follows:

Sec. 7.1075. DISPOSITION OF PENALTY COLLECTED FROM PUBLIC UTILITY. Requires that a penalty collected under this subchapter from a public utility be paid to TNRCC and deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 17. Amends Subchapter D, Chapter 7, Water Code, by adding Section 7.112, as follows:

Sec. 7.112. LIMITATION ON SUIT FOR VIOLATION OF SECTION 11.081. Provides that an action to collect the penalty provided by Section 7.102 for a violation of Section 11.081 (Unlawful Use of State Water) must be brought within two years from the date of the alleged violation.

SECTION 18. Amends Section 7.351, Water Code, to make a conforming change.

SECTION 19. Amends Section 11.0843(a), to make conforming and nonsubstantive changes.

SECTION 20. Amends Section 11.085, Water Code, by adding Subsection (w), as follows:

(w) Provides that the requirements of this section (Interbasin Transfers) apply to the transfer of water from one river basin to another regardless of whether all or any part of the water right, permit, certified filing, or certificate of adjudication under which the water is authorized to be used is also transferred.

SECTION 21. Amends Section 11.134(c), Water Code, to prohibit TNRCC, beginning January 5, 2002, rather than September 1, 2001, from issuing a water right for municipal purposes in certain regions.

SECTION 22. Amends Section 11.138(a), Water Code, to authorize TNRCC, by rule, to authorize the beneficial use, without a permit, of not more than 25 acre-feet of water, for a term not to exceed one year, if the diversion of water will not affect existing water right holders and the user of the water registers the use with TNRCC in the manner required by TNRCC.

SECTION 23. Amends Section 11.139, Water Code, to authorize TNRCC to grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication under Subchapter L (Emergency and Temporary Orders), Chapter 5 (Texas Natural Resource Conservation Commission). Deletes existing text regarding emergency authorizations. Makes a conforming change.

SECTION 24. Amends Section 11.142(a), Water Code, to provide that a person who temporarily stores more than 200 acre-feet of water in a dam or reservoir described by this subsection is not required to obtain a permit for the dam or reservoir if the person can demonstrate that the person has not stored in the dam or reservoir more than 200 acre-feet of water on average in any 12-month period. Makes a nonsubstantive change.

SECTION 25. Amends Section 11.146, Water Code, by adding Subsection (g), as follows:

(g) Provides that this section (Forfeitures and Cancellation of Permit for Inaction) does not apply to a permit that contemplates construction of a reservoir designed for the storage of more than 75,000 acre-feet of water

SECTION 26. Amends Section 11.173(b), Water Code, to provide that a permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) of this section (Cancellation in Whole or in Part) if it was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder and consistent with projections of future water needs contained in the state water plan, or if it was obtained as the result of the construction of a reservoir funded, in whole or in part, by its holder as part of the holder's long-term planning.

SECTION 27. Amends Section 11.177(b), Water Code, to make conforming changes.

SECTION 28. Amends Sections 12.052(c), (d), (e), and (f), Water Code, to make conforming and nonsubstantive changes.

SECTION 29. Amends Section 13.242(b), Water Code, to provide that a person that violates this section is subject to the penalties described in Subchapter C, Chapter 7.

SECTION 30. Amends Chapter 7, Water Code, by adding Subchapter I, and transfers Sections 13.412, 13.4131, and 13.4132, Water Code, to Subchapter I, Chapter 7, Water Code, redesignated as Section 7.402, 7.403, and 7.404, as follows:

SUBCHAPTER I. RECEIVERSHIP; SUPERVISION OF CERTAIN UTILITIES

Sec. 7.401. DEFINITION. Defines, in this subchapter, "affiliated interest" and "affiliate."

Sec. 7.402. RECEIVERSHIP. Makes conforming changes.

Sec. 7.403. SUPERVISION OF CERTAIN UTILITIES. Authorizes TNRCC to require the utility to meet, rather than abide by, conditions and requirements prescribed by TNRCC and to obtain commission approval before taking an action under Subdivision (1), rather than Subsection (b), of this subsection. Authorizes an action or transaction for which commission approval is required by this section that occurs without commission approval to be voided by TNRCC. Deletes text regarding TNRCC's supervision of a utility. Makes conforming and nonsubstantive changes.

Sec. 7.404. OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. Makes conforming changes.

SECTION 31. Amends Section 13.414, Water Code, as follows:

Sec. 13.414. New title: VIOLATION BY RETAIL PUBLIC UTILITY OR AFFILIATED INTEREST. Makes conforming changes.

SECTION 32. Amends Section 15.102(b), Water Code, to authorize the Texas Water Development Board (board) to use the loan fund to provide grants for projects that include the provision of, rather than the supplying of water and wastewater services in economically distressed areas; and one or more of the following projects, if the legislature appropriates money specifically for that purpose: agricultural water conservation; weather modification; brush control; or production of water in connection with an oil or gas operation.

SECTION 33. Amends Section 15.4061(h), Water Code, to require the board to require that regional water plans developed or revised under contracts entered into under this section (Funding for Regional Water Plans) be made available to the Texas Department of Agriculture (TDA), in addition to TNRCC and the Texas Parks and Wildlife Department (TPW).

SECTION 34. Amends Section 15.7031(c), Water Code, to authorize TDA to provide input to TNRCC, as appropriate, during the review and approval process for dedication of water rights.

SECTION 35. Amends Sections 16.012(c), (h), and (j), Water Code, as follows:

(c) Authorizes TDA to provide advice to the executive administrator of the board, where appropriate, regarding any of the duties to be performed under Subsection (b). Subsection (b) relates to studies, investigations, and surveys.

(h) Deletes language that conditions the requiring of TNRCC to provide water availability models on flows being at 75 and 50 percent of normal.

(j) Makes a conforming change.

SECTION 36. Amends Sections 16.051(a) and (d), Water Code, to require the board to review and update the guidance principles, with input from TNRCC, TDA, and TPW, as necessary, but at least every five years to coincide with the five-year cycle for adoption of a new state water plan. Makes conforming changes.

SECTION 37. Amends Section 16.053, Water Code, by amending Subsections (c), (e), (i), and (j), and by adding Subsection (l)-(o), as follows:

(c) Authorizes, rather than requires, the initial coordinating body to designate additional representatives to serve on the regional water planning group. Requires the initial coordinating body to designate additional representatives if necessary to ensure adequate representation from the interests comprising the region. Requires the regional planning group to maintain adequate representation from those interests. Requires that representatives of the board, TPW, and TDA serve as ex officio members of each regional water planning group.

(e) Requires each regional water planning group to submit to the board a regional water plan that identifies certain sources, factors, and actions. Makes conforming and nonsubstantive changes.

(i) Requires the regional water planning groups to submit their adopted regional water plans to the board by January 5, 2001, rather than September 1, 2000. Makes a nonsubstantive change.

(j) Makes conforming and nonsubstantive changes.

(l) Authorizes a political subdivision to contract with a regional water planning group to assist the regional water planning group in developing or revising a regional water plan.

(m) Provides that a cause of action does not accrue against a regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (l) for an act or omission in the course and scope of the person's work relating to the regional water planning group.

(n) Provides that a regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (l) is not liable for damages that may arise from an act or omission in the course and scope of the person's work relating to the regional water planning group.

(o) Requires the attorney general, on request, to represent a regional water planning group, a representative who serves on the regional water planning group, or an employee of a political subdivision that contracts with the regional water planning group under Subsection (l) in a suit arising from an act or omission in the course and scope of the person's work relating to the regional water planning group.

SECTION 38. Amends Section 16.054(a), Water Code, to authorize the TDA to provide input and

assistance to water resource management, water conservation, and drought planning.

SECTION 39. Amends 16.237(a), Water Code, to make conforming and nonsubstantive changes.

SECTION 40. Amends Sections 17.871(2) and (6), Water Code, to redefine "borrower district" and "lender district."

SECTION 41. Amends Subchapter J, Chapter 17, Water Code, by amending Section 17.895, and adding Section 17.8955, as follows:

Sec. 17.895. CONSERVATION LOANS. Provides that this section applies only to a conservation loan from certain lender and borrower districts. Deletes a provision authorizing conservation loans for capital equipment or materials, labor, preparation costs, and installation costs for preparing and maintaining land to be used for brush control activities and for implementing precipitation enhancement activities in areas of the state where such activities would be, in the board's judgment, most effective. Authorizes the board or lender districts to seek the advice of TDA regarding the feasibility of a project for which a conservation loan is sought. Makes conforming changes.

Sec. 17.8955. CONSERVATION LOANS FOR BRUSH CONTROL AND PRECIPITATION ENHANCEMENT. Authorizes the board or lender districts to make conservation loans for capital equipment or materials, labor, preparation costs, and installation costs for preparing and maintaining land to be used for brush control activities and for implementing precipitation enhancement activities in areas of the state where such activities would be, in the board's judgment, most effective. Authorizes such a loan to be made by a lender district to an individual borrower for use on private property or by the board to a borrower district.

SECTION 42. Amends Section 26.0135(h), Water Code, to provide that hydroelectric rights of facilities of less than five megawatts are not subject to the assessment provided for in this section.

SECTION 43. Amends Section 26.121(a), Water Code, to provide that this subdivision does not apply to any act under the jurisdiction of TDA.

SECTION 44. Amends Section 26.127, Water Code, to authorize the executive director to enter into contracts or other agreements with TDA, on behalf of and with the consent of the commission, for purposes of obtaining laboratory services for water quality testing.

SECTION 45. Amends Section 35.007(e), Water Code, to authorize TDA to provide input to the executive director for purposes of preparing the report required by this section.

SECTION 46. Amends Chapter 35, Water Code, by adding Section 35.010, as follows:

Sec. 35.010. CREATION OF DISTRICTS ON PETITION AFTER DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA. Prohibits TNRCC from considering the creation of a groundwater conservation district in a designated priority groundwater management area before the conclusion of the next regular session of the Texas Legislature following the designation unless the local landowners have initiated a petition process under Chapter 36 for the creation of a groundwater conservation district with a priority ground water management area.

SECTION 47. Amends Section 35.012, Water Code, by adding new Subsections (c) and (d), redesignating existing Subsections (c)-(f) as Subsections (e)-(h), and amending existing Subsection (d), as follows:

(c) Requires TNRCC, not later than the 10th day after the date on which the TNRCC order designating a priority groundwater management area is issued, to send a written notice of TNRCC's actions to each entity entitled to notice. Provides that the notice must include TNRCC's findings and conclusions from the data and information considered in

designating the priority groundwater management area and TNRCC's recommendation regarding the need for a groundwater conservation district in the priority groundwater management area.

(d) Requires the Texas Agricultural Extension Service, as soon as possible after a TNRCC order designating a priority groundwater management area, to begin an educational program within the area with the assistance and cooperation of the Texas Water Development Board, TNRCC, other state agencies, and existing districts to inform the residents of the status of the area's water resources and management options including possible formation of a district.

(f) Redesignated from existing Subsection (d). Deletes existing language to make a conforming change.

SECTION 48. Amends Section 35.013(d), Water Code, to provide that the board may administer certain educational programs with the cooperation and assistance of TDA.

SECTION 49. Amends Section 36.014, Water Code, to make conforming changes.

SECTION 50. Amends Section 36.015, Water Code, to make conforming changes.

SECTION 51. Amends Section 36.0151, Water Code, as follows:

Sec. 36.0151. New title: NOTICE OF CREATION BY COMMISSION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA. Makes conforming changes.

SECTION 52. Amends Section 36.051, Water Code, by amending Subsections (b) and (c), and adding Subsection (d), to provide that to be qualified as a director, a person must be a registered voter in the precinct that the person represents. Makes conforming changes.

SECTION 53. Amends Section 36.059(b), Water Code, to make conforming changes.

SECTION 54. Amends Section 36.108, Water Code, as follows:

Sec. 36.108. New title: JOINT PLANNING IN MANAGEMENT AREA OR PRIORITY GROUNDWATER MANAGEMENT AREA. Makes conforming changes.

SECTION 55. Transfers Section 341.047, Health and Safety Code, to Subchapter E, Chapter 7, Water Code, redesignates it as Section 7.1605, Water Code, and amends it, as follows:

Sec. 7.1605. New title: VIOLATIONS RELATING TO PUBLIC DRINKING WATER. Makes conforming changes.

SECTION 56. Amends Section 341.048, Health and Safety Code, as follows:

Sec. 341.048. New title: VIOLATION. Deletes text to make conforming changes.

SECTION 57. Amends Section 341.0485(c), Health and Safety Code, to make a conforming change.

SECTION 58. Amends the heading to Section 44.901, Education Code, as follows:

Sec. 44.901. New title: ENERGY OR WATER CONSERVATION MEASURES.

SECTION 59. Amends Sections 44.901(a)-(f), Education Code, to include energy and water conservation measures among the contracts that the board of trustees of a school district are authorized to enter into. Includes water, along with energy, conservation to the application of this section. Sets forth the types of contracts to which this section applies. Provides that Section 19, Article 3271a, V.T.C.S. (The Texas Engineering Practice Act), applies to work performed under this section.

SECTION 60. Reenacts and amends Section 51.927, Education Code, as amended by Chapters 627 and 1142, Acts of the 75th Legislature, Regular Session, 1997, as follows:

Sec. 51.927. New title: ENERGY OR WATER CONSERVATION MEASURES. Includes energy and water conservation measures among the contracts that the governing body of an institution of higher education is authorized to enter into. Includes water, along with energy, conservation to the application of this section. Sets forth the types of contracts to which this section applies. Provides that Section 19, Article 3271a, V.T.C.S. (The Texas Engineering Practice Act), applies to work performed under this section. Sets forth procedures for an approval process and the development of guidelines. Makes conforming changes.

SECTION 61. Amends Section 2166.406, Government Code, as follows:

Sec. 2166.406. New title: ENERGY OR WATER CONSERVATION MEASURES.

SECTION 62. Amends Section 2166.406(a)-(h), (k), and (l), Government Code, to include energy and water conservation measures among the contracts that the governing body of state agency is authorized to enter into. Includes water, along with energy, conservation to the application of this section. Sets forth the types of contracts to which this section applies. Provides that Section 19, Article 3271a, V.T.C.S. (The Texas Engineering Practice Act), applies to work performed under this section. Provides that a contract must comply with Section 51.927(h), Education Code. Provides that the cost savings projected by offerors must be reviewed by a licensed professional engineer selected by the governing body of the state agency having charge and control of the building and facility who is not an officer or employee of an offeror or otherwise associated with a proposed contract. Provides that a contract is not required to be reviewed or approved by the State Energy Conservation Office, the Texas Energy Coordination Council, or the board.

SECTION 63. (a) Repealer: Sections 11.082 (Unlawful Use: Civil Penalty), 11.0841 (Civil Remedy), 11.0842 (Administrative Penalty), 11.148 (Emergency Suspension of Permit Conditions), 13.411 (Action to Enjoin or Require Compliance), 13.4133 (Emergency Rate Increase in Certain Circumstances), 13.4151 (Administrative Penalty), 13.416 (Penalties Cumulative), 13.417 (Contempt Proceedings), and 13.418 (Disposition of Fines and Penalties; Water Utility Improvement Account), Water Code.

(b) Repealer: Sections 341.049 (Administrative Penalty) and 341.050 (Penalties Cumulative), Health and Safety Code.

SECTION 64. Effective date: September 1, 1999.

SECTION 65. Makes application of this Act prospective.

SECTION 66. Emergency clause.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original in the caption by specifying that this Act relates to the powers of the Texas Natural Resource Conservation Commission, as well as to the development and management of water resources.

The substitute adds new SECTIONS 1, 2, 13, 21, 25, 29, 32-45, 48, 52, 53, and 58-62. For a complete analysis of these new sections please see the Section-by-Section Analysis portion of this document.

The substitute redesignates SECTIONS 1, 36, 37, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 23, 27, 29, 30, 32, 33, 34, 35, 38, 40, and 42 of the original as SECTIONS 3, 4, 5, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 20, 22, 23, 26, 27, 28, 31, 46, 49, 50, 51, 54, 55, 56, 57, 64, and 66, respectively.

The substitute redesignates SECTIONS 6 and 22 of the original as SECTIONS 10 and 30,

respectively, and modifies them by making nonsubstantive changes.

The substitute redesignates SECTION 2 of the original (proposed Sections 5.517-5.520, Water Code) as SECTION 6, and modifies it, as follows:

Modifies proposed Section 5.517 (Emergency Permit to Divert and Use Water; Amendment to Water Right), in Subsection (b), by authorizing the executive director of the Texas Natural Resource Conservation Commission (executive director, TNRCC) to issue an emergency order if an imminent threat to the public health and safety, rather than the public health, safety, and welfare or environment, requires emergency action before the commission can take action under Subsection (a) and there is no feasible alternative.

Modifies proposed Section 5.518 (Emergency Order for Temporary Transfer of Use of Water Right) by requiring the executive director or TNRCC, in transferring the amount of water requested by the applicant, to allocate the requested amount among two or more permits, certified filings, or certificates of adjudication for a use other than domestic, municipal, or electric generation, rather than for a domestic or municipal use, and further modifies this section by making nonsubstantive changes.

The substitute redesignates SECTION 14 of the original (Section 11.0843, Water Code) as SECTION 19, reinstates text deleted in the original, makes reference to a hearing held in accordance with Section 7.058, rather than 11.0842, Water Code, and makes nonsubstantive changes.

The substitute redesignates SECTION 18 of the original (Section 11.142(a), Water Code) as SECTION 24 and modifies it to provide that a person who temporarily stores more than 200 acre-feet of water in a dam or reservoir described by this subsection is not required to obtain a permit for the dam or reservoir if the person can demonstrate that the person has not stored in the dam or reservoir more than 200 acre-feet of water on average in any 12-month period, rather than providing that normal storage may involve the temporary storage of greater than 200 acre-feet if the owner of the structure maintains records which can demonstrate that throughout a 12-month period an average of not more than 200 acre-feet of water is impounded in such a structure.

The substitute deletes SECTION 24 of the original, which would have amended Section 35.008, Water Code, relating to public comment hearings.

The substitute deletes SECTION 25 of the original, which would have amended Section 35.009, Water Code, relating to public comment hearings.

The substitute deletes SECTION 26 of the original, which would have amended Section 35.012(a), Water Code, relating to public comment hearings.

The substitute redesignates SECTION 28 of the original (Section 35.012, Water Code) as SECTION 47 and modifies it by providing for notice to each entity entitled to notice under Section 35.009(c), rather than notice to each landowner in the designated priority groundwater management area.

The substitute deletes SECTION 31 of the original, which would have added proposed Section 36.1074, relating to the extension of district authority to additional aquifers within district's geographic boundaries.

The substitute redesignates SECTION 39 of the original (Repealer) as SECTION 63 and modifies it by no longer repealing Sections 35.004, 35.005, and 35.006, Water Code.

The substitute redesignates SECTION 41 (prospective clause) of the original as SECTION 65 and modifies it to by adding new Subsections (c)-(e) to specify that changes made to Sections 15.102(b), 16.053(m)-(o), 17.871, 17.895, and the addition of Section 17.8955, Water Code, apply prospectively from the effective date of this Act.

SUMMARY OF COMMITTEE ACTION

SB 1311

April 21, 1999 2:00PM or upon adjournment
Considered in public hearing
Testimony taken in committee
Left pending in committee

April 28, 1999 2:00PM or upon adjournment
Considered in public hearing
Amendment(s) considered in committee
Committee substitute considered in committee
Testimony taken in committee
Left pending in committee

May 10, 1999 upon final recess
Considered in formal meeting
Amendment(s) considered in committee
Committee substitute considered in committee
Reported favorably as substituted

WITNESS LIST

SB 1311
HOUSE COMMITTEE REPORT
Natural Resources Committee

April 21, 1999 - 2:00PM or upon adjournment

For: Powers, Bill (Texas Farm Bureau)

Registering, but not testifying:

For: Colbert, Win (Texas Utilities)

Halbert, Wayne (Self and Texas Irrigation Council)

April 28, 1999 - 2:00PM or upon adjournment

For: Wilkes, Morris (Johnson Controls)

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

May 12, 1999

TO: Honorable David Counts, Chair, House Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1311 by Brown, J. E. "Buster" (relating to the development and management of water resources and the powers of the Texas Natural Resource Conservation Commission),
Committee Report 2nd House, Substituted

No significant fiscal implication to the State is anticipated.

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds	\$

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 551 Department of Agriculture, 582 Natural Resource Conservation
Commission, 580 Water Development Board

LBB Staff: JK, DE, DM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

April 1, 1999

TO: Honorable J.E. "Buster" Brown, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB 1311 by Brown, J. E. "Buster" (relating to the development and management of water resources), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.
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Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Natural Resource Conservation Commission

LBB Staff: JK, DE, DM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable J.E. "Buster" Brown, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1311 by Brown, J. E. "Buster" (Relating to the development and management of water resources.), **As Introduced**

No significant fiscal implication to the State is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 360 State Office of Administrative Hearings, 555 Agricultural Extension Service Texas, 302 Office Of The Attorney General, 580 Water Development Board, 582 Natural Resource Conservation Commission, 304 Comptroller of Public Accounts

LBB Staff: JK, DE, DM

A BILL TO BE ENTITLED

AN ACT:

Relating to the development and management of water resources.

MAR 15 1999

Filed with the Secretary of the Senate

MAR 15 1999Read and referred to Committee on NATURAL RESOURCES

Reported favorably

APR 06 1999

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

APR 15 1999

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by:

{ unanimous consent

{ ____ yeas, ____ nays

APR 15 1999

Read second time, _____, and ordered engrossed by:

{ unanimous consent

{ a viva voce vote

{ ____ yeas, ____ nays

APR 15 1999Senate and Constitutional 3 Day Rule suspended by a vote of 30 yeas, 0 nays.APR 15 1999

Read third time, _____, and passed by:

{ A viva voce vote

{ 30 yeas, 0 nays

 SECRETARY OF THE SENATE

OTHER ACTION:

April 15, 1999

Engrossed

April 16, 1999

Sent to House

Engrossing Clerk


APR 16 1999

Received from the Senate

APR 19 1999Read first time and referred to Committee on Natural ResourcesMAY 10 1999

Reported ____ favorably (____) (as substituted)

MAY 17 1999

Sent to Committee on (Calendars) (____)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of ____ yeas, ____ nays, ____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of ____ yeas, ____ nays, ____ present, not voting.

Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of ____ yeas, ____ nays, ____ present, not voting)

Returned to Senate.

Returned from House without amendment.

Returned from House with ____ amendments.

Concurred in House amendments by a viva voce vote ____ yeas, ____ nays.

CHIEF CLERK OF THE HOUSE

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

CONFERENCE